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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-

R. W. JONES, SR., *et al.*,
Petitioners,

v.

CHARLES T. WOLF, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

R. W. Jones, Sr., *et al.*, respectfully petition for a writ of certiorari to review the judgment of the Supreme Court of Georgia entered in the above-entitled case following remand from this Court for further proceedings not inconsistent with this Court's opinion of July 2, 1979.

OPINIONS BELOW

The opinion of the Supreme Court of Georgia (App. 50a)[1] is not yet reported. The opinion of this Court (App. 23a) appears at —— U.S. ——, 61 L.Ed.2d 775, 99 S.Ct.

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[1] The Appendix ("App.") which is bound with this petition contains the text of all opinions below. One copy of a separate Joint Appendix ("JA"), originally filed in this Court during the October Term 1978, is being lodged with the Clerk of this Court.

3020 (1979). The earlier opinion of the Supreme Court of Georgia (App. 11a) is reported at 241 Ga. 208, 243 S.E.2d 860 (1978). The opinion of the Superior Court of Bibb County, Georgia (App. 1a) is not reported.

JURISDICTION

The judgment of the Supreme Court of Georgia was entered on September 27, 1979. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Whether the Supreme Court of Georgia has complied with the mandate of this Court to articulate, on remand, a constitutionally permissible means of identifying the "true congregation" in a church property dispute.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Amend. I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof * * *.

U.S. Const., Amend. XIV, Sec. 1:

> * * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

In 1973, the congregation of the Vineville Presbyterian Church held a meeting at which a majority of those present voted to withdraw from affiliation with the mother church, the Presbyterian Church in the United States ("PCUS").

As this Court later recognized, PCUS

> has a generally hierarchical or connectional form of government, as contrasted with a congregational form. Under the polity of the PCUS, the government of the local church is committed to its Session in the first instance, but the actions of this assembly or "court" are subject to the review and control of the higher church courts, the Presbytery, Synod, and General Assembly, respectively. The powers and duties of each level of the hierarchy are set forth in the constitution of the PCUS, the Book of Church Order * * *. [App. 24a.]

After being notified of the schism by the withdrawing members, the Augusta-Macon Presbytery, pursuant to PCUS's Book of Church Order ("BCO"), appointed a Commission to consider and attempt to resolve the dispute. The Commission eventually issued a written ruling declaring that the minority faction constituted the "true congregation of the Vineville Presbyterian Church," and withdrawing from the majority faction "all authority to exercise office derived from the Presbyterian Church in the United States." JA 235.

Nevertheless, the majority retained control of the church property, struck the names of the minority group from the church rolls, and associated itself with a denomination unconnected with PCUS. JA 318. Representatives of the minority brought this action seeking declaratory and injunctive orders establishing their right to use of the church property.

The Superior Court of Bibb County, Georgia, purportedly applying a "neutral principles of law"[2] ap-

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[2] Georgia's "neutral principles" approach to the resolution of church property disputes evolved in the wake of this Court's holding in *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969) ("Presbyterian Church

proach, granted judgment for the majority, and the Supreme Court of Georgia affirmed. This Court granted certiorari and, after argument, vacated the judgment and remanded the case for further proceedings not inconsistent with its opinion of July 2, 1979.

As stated in the majority opinion, the issue before this Court was "which faction of the formerly united Vineville congregation is entitled to possess and enjoy the property located at 2193 Vineville Avenue in Macon, Ga." App. 28a). All Justices agreed with this formulation of the issue. *See* App. 38a.

Holding that a state is constitutionally entitled to adopt neutral principles as a means of adjudicating church property disputes, this Court was nevertheless unable to determine "whether the Georgia neutral principles analysis was constitutionally applied on the facts of this case." App. 33a. Since the Georgia courts had treated the case as though it involved a dispute between the general church and an entire local congregation, this Court could not ascertain from the opinions below whether the Georgia courts had used a constitutionally permissible method of determining which faction represents the Vineville Church.

In remanding the case, this Court noted that "there are at least some indications that under Georgia law the

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I"), that Georgia courts violated the First Amendment in utilizing a departure-from-doctrine test to determine whether an implied trust existed in favor of the general church in a property dispute between a general church and an entire local congregation.

The Georgia Supreme Court apparently believed that it was foreclosed from deferring to a church court decision. *See* n.5, *infra*. In any event, the court began to look at state stautes, corporate charters, relevant deeds and the organizational constitution of the denomination to determine whether the parent church had an implied trust giving it the right to control local church property. *See Carnes* v. *Smith*, 236 Ga. 30, 222 S.E.2d 332, *cert. denied*, 429 U.S. 868 (1976), citing *Maryland & Virginia Eldership of the Churches of God* v. *Church of God at Sharpsburg*, 396 U.S. 367 (1970).

process of identifying the faction that represents the Vineville church involves considerations of religious doctrine and polity" and that "if Georgia law provides that the identity of the Vineville church is to be determined according to the 'laws and regulations' of the PCUS, then the First Amendment requires that the Georgia courts give deference to the presbyterial commission's determination of that church's identity." App. 35a-36a.

As further guidance to the Georgia court, this Court suggested that the adoption of a presumptive rule of majority representation, defeasible upon a showing that the identity of the local church is to be determined by some other means, would be consistent with the First Amendment. This Court was explicit, however, in requiring that "[i]f the Georgia Supreme Court adopts a rule of presumptive majority representation on remand, then it should also specify how, under Georgia law, that presumption may be overcome." App. 35a, n.5.

On September 27, 1979, the Georgia Supreme Court affirmed the judgment of the trial court. The accompanying opinion, because it was joined in by only two of the Georgia Supreme Court's seven members, failed to provide the statement of Georgia law mandated by this Court. The two Justices who did express their views stated that Georgia has adopted a presumptive rule of majority representation, which is overcome "by an application of what has come to be known as 'neutral principles' of law—that is, 'state statutes, corporate charters, relevant deeds, and the organizational constitutions of the denomination.'" App. 50a. Ignoring this Court's admonition that reference to the "laws and regulations" of PCUS as a means of determining the identity of the Vineville Church under Georgia law would require deference to the presbyterial commission's decision (App. 36a), the two-judge opinion rested on a review

of the church documents in this case, including "the organizational constitutions of the denomination," which purportedly disclosed no provision that would rebut the Georgia presumption of majority rule. App. 52a. The two-judge opinion, in its frequent references to *Crumbley* v. *Solomon*, 243 Ga. 343, 254 S.E.2d 330 (1979), left little doubt that it was actually applying an "implied trust" theory and would require that such a trust in favor of the general church be established before awarding church property to a loyal minority faction.

REASONS FOR GRANTING THE WRIT

I. The Georgia Supreme Court Failed To Declare the Law of Georgia, as Mandated by This Court on Remand, and Petitioners Are Thus Unable To Test the Constitutionality of the Judgment Affecting Their Religious Rights.

This case was remanded for an authoritative articulation of Georgia law, not only so that the law would henceforth be known to all those involved in church property disputes, but also so that this Court could determine whether, in this case, governing Georgia law comports with the dictates of the First Amendment.[3] The Georgia Supreme Court has not provided a statement of Georgia law and thus has not complied with the directions of this Court on remand.

The single opinion rendered by the Georgia court was signed by only two of its members (Chief Justice Nichols and Justice Hall). Four other members (Undercofler, P.J., and Jordan, Hill and Bowles, J J.) declined to join the opinion and concurred only in the result. Justice

[3] "It remains to be determined whether the Georgia netural principles analysis was constitutionally applied on the facts of this case. * * * Since the grounds for the decision that respondents represent the Vineville Church remain unarticulated, the judgment of the Supreme Court of Georgia is vacated and the case is remanded for further proceedings not inconsistent with this opinion." App. 33a, 36a.

Marshall dissented. Thus, only two of the seven members of the court expressed any views at all.

The fact that a single opinion joined in by only two Justices is "no ruling at all" is confirmed by *Grantham Transfer Co.* v. *Hawes*, 225 Ga. 436, 169 S.E.2d 290 (1969), decided even before the advent of the more stringent Rule 58 discussed below.[4] In *Hawes* it was argued that an opinion by three of the five concurring judges of the Georgia Court of Appeals became the law of the case. The Georgia Supreme Court disagreed:

> This cannot be true, as only five of the nine judges of that court concurred in the judgment of affirmance with two of these concurring in the judgment only. Four dissented. This renders the entire opinion not a ruling by the court but merely the view of only three judges, *which is no ruling at all*, and hence it cannot constitute the law of the case. See [three cases], which hold that minority opinions are not binding, although the judgments were concurred in by a majority of the court. We therefore put those judgments aside as having no relevancy to the issues in this case. [225 Ga. at 439, 169 S.E.2d at 293-294; emphasis added; citations omitted.]

On August 1, 1979, some ten years after the *Hawes* ruling, a change in the Rules of the Supreme Court of Georgia made even more explicit the ineffectuality of the two-judge opinion below. Rule 58 now provides:

> Justices concurring agree with the opinion and judgment. Justices concurring specially or in the judgment only *do not agree* with all that is said in the opinion. Justices dissenting *disagree* with the opinion and judgment. [Emphasis added.]

Thus, under Georgia law, five out of the seven Justices not only failed to express their views but *did not agree* with all or part of the only written opinion. We

[4] The *Hawes* case has never been overruled or questioned in any way by the Georgia courts.

are not told what part of that opinion they did not agree with, or why. We do not even know if they accept the presumptive majority rule in Georgia, since they could have concurred on a ground having nothing to do with that rule.[5] Or they might agree that a majority rule applies but that no rebuttal is permitted, or disagree as to what needs to be shown in order to rebut the majority rule.[6] In any event, the important point is that neither petitioners nor this Court knows what the Georgia law is on the subject, and so long as this is so, that law in effect remains constitutionally immune from review by this Court. As this Court recognized when it remanded the case, petitioners cannot challenge state law when they do not know what that state law is.

We respectfully submit that the only way petitioners and all other members of hierarchical churches in Georgia can be accorded their constitutional rights is through a direction from this Court to a majority of the members of the Supreme Court of Georgia to express their views, so that those views can be constitutionally tested here.

* * * *

Logically, this Petition should end here. Since we have no concept of the views of five of the seven members of the court whose judgment is sought to be reviewed, there

[5] They might continue to believe, for example, that accepting the decision of a church court as to which faction has the right to use and enjoy church property is "contrary to the spirit of controlling law," as Justices Nichols and Hall said they previously believed to be the applicable rule. App. 50a-51a. Such a belief would not be consistent with this Court's opinion in the instant case. *See* App. 36a.

[6] It is not without significance that three of the four Justices who separately concurred in the result below *dissented* in *Crumbley* v. *Solomon*, *supra*—the case cited and relied upon three times by Justices Nichols and Hall in this case—and that the only Justice to dissent (without opinion) in the instant case was part of the majority in *Crumbley*. One can hardly make any meaningful assumptions, therefore, as to the position or reasoning that each Justice may have had in considering the instant case on remand.

is nothing further to be addressed until those views are made known. Petitioners are entitled to have their petition granted, the judgment summarily reversed, and the case remanded with appropriate instructions.

Obviously, however, petitioners would be placed in an awkward and dangerous position by declining to say more. They have no assurance that this Court will agree with them that there is a need for a further remand. They are forced, therefore, to treat the only opinion rendered below as if it were the opinion of the Georgia Supreme Court—which it clearly is not. We now address that opinion only because to do otherwise might be tantamount to foregoing our only opportunity to demonstrate that even the two-judge opinion seriously misconstrues this Court's mandate and denies petitioners their constitutional rights.

II. The Two-Judge Opinion of the Georgia Supreme Court Flouts the Mandate of This Court.

This Court's opinion highlighted a number of issues to be addressed by the Supreme Court of Georgia on remand. The two judges of the Georgia court who expressed their opinions on remand simply ignored or brushed aside at least four of these issues in reaffirming the result previously reached.

First, this Court pointed out that both Georgia courts had viewed the case as involving nothing more than an application of the principles developed in cases of church property disputes between the general church and the entire local congregation, ignoring the "significant complicating factor" that in this case the dispute arose between competing factions of the local congregation. *See* App. 33a. The two-judge opinion evidences no recognition of the distinction thus drawn by this Court.

That the two justices continue to equate a loyal minority faction of a local congregation with the general church

to which that faction is affiliated is made clear by their discussion of and reliance on *Crumbley* v. *Solomon, supra,* decided by the Georgia Supreme Court after its initial decision in this case. Characterizing *Crumbley* as "a case in which two local church factions were aligned against each other in litigation while the national church chose to align itself with the one local group against the other," the two-judge opinion cites the case for the proposition that the presumptive majority rule in local schism cases "may be overcome by reliance upon neutral statutes, corporate charters, relevant deeds, and the organizational constitutions of the denomination." App. 52a.

In fact, however, the court in *Crumbley* applied those "neutral principles of law" to determine "whether the general church or the local church controls the local property." 243 Ga. at 343, 254 S.E.2d at 332. Refusing to respond to this Court's admonition that choosing between local factions does not involve application of the same principles as choosing between a parent church and a local congregation, the two-judge opinion, in its references to *Crumbley,* seems to imply that Georgia intends to continue to award church property to a withdrawing majority unless a trust in favor of the mother church can be implied, even where another faction of the local congregation, rather than the mother church, is competing for control of the church property.[7]

In short, the two-judge opinion responds to this Court's mandate to state a method for resolving intra-congregation disputes by stating that it will treat local schism

[7] The *Crumbley* court found "that a trust for the benefit of the general church has been implied by the [Holiness Baptist] Association's discipline," which provided that "the Association shall hold all church property, regardless if all members vote to change the church to some other faith." *Id.* at 333. Since the general church was a party in *Crumbley,* there was no need for the court to apply a presumption of majority rule analysis.

cases as though they involved a dispute between a general church and an entire local congregation, despite this Court's finding that the two kinds of cases cannot be lumped together in such a manner. *See* App. 33a, 51a-52a.

Second, the two-judge opinion completely misstates the role that Section 22-5504 of the Georgia Code [8] has played in this case. Noting that this Court had "expressed concern about why this section was not discussed" by the Georgia Supreme Court in its earlier opinion, the two-judge opinion says respondents "stipulated in the trial court that this section applies only to churches having a congregational form of government," and the "existence of that stipulation" was the reason the court did not discuss the statute in its original opinion.[9] App. 51a. This simply is not true.

What actually occurred was that petitioners first sued respondents in federal court on the theory that if the first part of Section 22-5504 could somehow be interpreted as a majority rule in favor of respondents so as to give them exclusive use of the church property, it was unconstitutional. To avoid such a contention, respondents replied that they were not relying on Section 22-5504, and the federal action was therefore dismissed. In the instant suit, respondents admitted in their Answer that they claimed no right of possession pursuant to Section 22-5504 (JA 7, 243), and they stipulated to the same effect. JA 320. The reason they did so is obvious. The statute, properly construed, expresses the legislature's

[8] "22-5504. Majority represent church. Withdrawal by part of congregation.—The majority of those who adhere to its organization and doctrines represent the church. The withdrawal by one part of a congregation from the original body, or uniting with another church or denomination, is a relinquishment of all rights in the church abandoned."

[9] The two-judge opinion's finding that Section 22-5504 "properly is to be construed as being applicable only to churches having a congregational form of government" raises serious free exercise and equal protection questions. *See* pp. 20-21, *infra.*

intent that persons like respondents withdrawing from a church relinquish all rights in the church property.

Most importantly, however, neither party at any time stipulated that Section 22-5504 "applies only to churches having a congregational form of government," as stated in the two-judge opinion. In fact, petitioners contended before the Georgia Supreme Court that the second sentence of Section 22-5504 was not limited to congregational churches, and they devoted some ten paragraphs of their brief to a discussion of why the statutory section was applicable to the instant case. *See* Brief for Appellants before the Georgia Supreme Court, No. 33126, at 17-20.

Third, the two-judge opinion failed to answer important questions involving the Georgia Supreme Court's interpretation and application of another aspect of Georgia law. This Court in its opinion, citing Georgia Code §§ 22-5507 and 22-5508, as well as the case of *Carnes* v. *Smith*, *supra*, said that, "Georgia law requires that 'church property be held according to the terms of the church government,' and provides that a local church affiliated with a hierarchical religious association 'is part of the whole body of the general church and is subject to the higher authority of the organization and its law and regulations.'" App. 35a. This Court therefore concluded that "if Georgia law provides that the identity of the Vineville church is to be determined according to the 'laws and regulations' of the PCUS, then the First Amendment requires that the Georgia courts give deference to the presbyterial commission's determination of that church's identity." App. 36a; footnote deleted.

In responding, the two-judge opinion said that, "In applying Code Ann. §§ 22-5507 and 5508 to the present litigation, this court is not concerned with the procedure by which factions within the local church and the national church decide which persons are 'true believers' or 'adherents to the true faith.'" App. 51a. The opinion agreed that church documents will be considered "insofar as they determine or assist in the determination of the persons who are 'entitled to possess and enjoy the property located at 2193 Vineville Avenue in Macon, Ga.'" App. 51a.

It seems clear from this recitation that the two-judge opinion accepted the fact, already suggested by this Court, that the identity of "the Vineville Presbyterian Church" was to be determined according to PCUS' constitution, the BCO. However, the opinion then arbitrarily and without basis in fact concluded that the church documents (including the BCO) in the present case "are silent as to which persons have the right to enjoy and to use the church property in the event of a schism at the local level." App. 52a. In other words, having conceded that under Georgia law the Georgia courts must look to the church documents to determine the persons who are entitled to possession of the local property, the two-judge opinion nevertheless concluded—squarely in opposition to a decision of the church court which was authorized by the BCO—that no resolution of this matter was to be found in the BCO.

If the two-judge opinion means that the BCO does not specifically state precisely who is to prevail as between two factions once a schism has arisen, it is, of course, correct. But the BCO does deal with the possibility of schisms, and provides a procedure for their resolution. Section 16-7 states that the Presbytery has the power to decide complaints, to redress anything done contrary to order, and to visit churches and redress evils. JA 55. Section 19-3 provides that a Commission can visit a church affected by disorder and settle its difficulties. JA 62-63. Section 18-6(12) gives the General Assembly final authority to suppress schismatical contentions and disputations. JA 61. And, of course, the entire system of review by ascending judicatories, as set forth in Sections 114-1 through 114-4, is intended to provide an internal mechanism for settlement of just such schisms as the one which arose here. JA 126-127.

In other words, rather than attempting to deal with the merits of each dispute, the BCO instead sets up a systematic method by which these schisms shall be decided, including the appointment of a Commission to determine any point in issue, such as who constitutes the true congregation of a local church. JA 62-63. This method of dealing with disputes derives from a central tenet of Presbyterianism—that the church should be governed by representative assemblies. JA 47.

It is clear that Georgia law does in fact provide that the identity of the Vineville Church is to be determined according to the "laws and regulations" of PCUS and that, therefore, as this Court said, "the First Amendment requires that the Georgia courts give deference to the presbyterial commission's determination of that church's identity." App. 36a. This the lower court failed to do—without explanation.

Fourth, the two-judge opinion utterly fails to provide a meaningful response to this Court's mandate that the Georgia Supreme Court, if it adopted a rule of presumptive majority repres. tation on remand, "should also specify how, under Georgia law, that presumption may be overcome." App. 35a, n.5.

This Court suggested that one way that a majority rule presumption could always be overcome was by providing in "the constitution of the general church, that the identity of the local church is to be established in some other way * * *." App. 34a. In their brief on remand, petitioners illustrated to the Georgia Supreme Court that under the provisions of the BCO, the determination of the true congregation of the Vineville Presbyterian Church was within the power of the Presbytery. Brief for Appellants on Remand at 17. In addition, petitioners urged the court to afford them an opportunity to introduce evidence that, prior to the time of the withdrawal vote in 1973, the General Assembly of PCUS had interpreted the church's constitutional provisions so as to leave no doubt as to the position of the denomination with

respect to the ownership, use, and control of church property. *Id.* at 18, n. 7.

In response, the two justices of the court below simply declared that a review which included examination of the BCO had turned up "no provision that would rebut the Georgia presumption of majority rule as to the right to control the actions of the titleholder * * *." App. 52a.

Not only were petitioners denied a hearing at which to demonstrate that the PCUS constitution could be used to rebut a presumption of majority rule, but they were given no guidelines by which to determine what would be required in the future to rebut such a presumption in the Georgia courts. Without such standards, Georgia judges will be free to award church property as they please, so long as a "neutral principle" is handy to support the desired outcome. To prevent the possibility of such unfortunate results, this Court should provide guidance to the courts in Georgia, and elswhere, regarding this still very confused area of the law.[10]

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[10] The few courts which have had an opportunity to apply the principles announced in this Court's decision in the instant case have interpreted those principles in widely varying ways. Two Justices of the Alabama Supreme Court, for example, read the decision as "holding that a denomination has a claim to the property of a local congregation only if the denominational constitution contains language requiring that disputed property be turned over to the denomination or if the charter of the local church contains similar langauge." *Trinity Presbyterian Church* v. *Tankersley*, 374 So.2d 861, 868 (1979) (Maddox, J., and Torbert, C.J., concurring specially), *petition for cert. filed* (U.S. Dec. 11, 1979) (No. 79-908).

The Florida Supreme Court, on the other hand, told by this Court to review its decision in *Mills* v. *Baldwin* in light of *Jones* v. *Wolf*, affirmed on remand its earlier decision that the church property should remain with the loyal minority faction "because of the structure and government of PCUS." 362 So.2d 2, 7 (Fla. 1978), *vacated and remanded*, 99 S.Ct. 3105, *aff'd on remand*, No. 51,588 (Fla. Sup. Ct., 1979). The dissenting opinion in the lower state appellate court, to which the Florida Supreme Court subscribed, made clear that overruling PCUS' determination of the purely ecclesiastical decision that the minority was the true local congregation was

III. The Georgia Court's Two-Judge Opinion, If Allowed To Stand, Would Violate the Free Exercise and Establishment Clauses, As Well As Equal Protection of the Laws.

The principal fallacy underlying the two-judge opinion is that it does not allow petitioners to practice their religion within a church structure of their choice without running the risk of having their church property taken from them. Put another way, the two-judge opinion forces petitioners, and the hierarchical church to which they belong, to place the title of all local churches in the name of PCUS, or to create an express or implied trust in those churches in favor of PCUS, because these are the only ways they can prevent outsiders from joining the church, voting to secede, and taking the church property with them. Petitioners must follow this course even though it results in a religious structure not of their choice and in fact represents a form of organization which is abhorrent to their ecclesiastical views.[11]

"[c]ontrary to the explicit command of the First Amendment, as made applicable to the States by the Fourteenth." *Baldwin* v. *Mills*, 344 So.2d 259, 268 (Fla. Dist. Ct. App. 1977) (Smith, J., dissenting).

Yet another interpretation of this Court's decision was applied by the Circuit Court of Amherst County, Virginia, which used a neutral principles approach and "found no provision of the constitution or canons of the general church or the diocese which permit a vote of even the majority of the local congregation to alienate the real property of the church without the written consent of the Bishop acting with the advice and consent of the Standing Commitee of the Diocese." *Diocese of Southwestern Virginia* v. *Wyckoff*, slip op. at 6 (Amherst County, Va. Cir. Ct. Nov. 16, 1979).

Clearly, the states need further guidance from this Court regarding what will pass constitutional muster.

[11] It cannot be emphasized too strongly that the procedural rules expressed in the BCO are a part of the theology of the PCUS. Indeed, to say one is a Presbyterian is to identify the content of one's religious faith with its form. A decision which forced PCUS to change its form would interfere with a polity which dates from the Sixteenth Century. *See* JA 16.

The BCO assumes on the one hand a great deal of day-to-day local autonomy in dealings with church property. Thus, PCUS does not in most instances own local property, nor is any trust created on such property in favor of PCUS. JA 35. On the other hand, *all* decisions of local churches—whether related to property or to any other matter—are subject to periodic review and possible reversal by higher church authority.[12] For PCUS members, this is the ideal solution to the problem of what they would regard as too much local authority on the one hand (as in the Baptist Church), and too much central control on the other (as in the Catholic Church). They wish local congregations to be able to deal freely with church property in the great majority of their day-to-day operations, while at the same time recognizing that major decisions—such as the sale, encumbrance or transfer of church property—are just as much subject to higher control as are major decisions dealing with other church matters.

What the two-judge opinion (and particularly its language distinguishing *Crumbley* [13]) has done is to say that

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[12] The Preface to the BCO states that "Ecclesiastical jurisdiction is a joint power, to be exercised by Presbyters in courts, and cannot be exercised by Presbyters as individuals." JA 30. And Section 14-5 of the BCO provides in part: "Although each court exercises original jurisdiction over all matters specially belonging to it, the lower courts are subject to the review and control of the higher courts, in regular graduation." JA 49. Every court above the Session reviews, at least once a year, the records of the court next below it and has the power to approve, disapprove or correct such records if the higher court deems the lower court action not to have been "wise, equitable [or] suited to promote the welfare of the Church * * *." § 114-1, 2, 3; JA 126. *See also* §§ 4-1, 16-7, 18-6(12), 19-3; JA 33, 55, 61, 62.

[13] The two-judge opinion, finding that the BCO was silent as to the right to possess, enjoy and control the use of local church property, noted that "[t]his silence distinguishes the present case from *Crumbley* v. *Solomon* * * *," in which the general church had a Disciplinary Rule providing that all church property would be held by the general church, even if all members of a local church voted to affiliate with another faith. *See* App. 52a.

what PCUS seeks is an *impermissible* form of church government, because unless PCUS is willing to own local property or create a trust in its favor, there can be no control over the decision of those who wish to leave the church and take the property with them. If the property is solely in the name of or in trust for the local church, a majority of the local congregation controls the property *even though* (a) PCUS has an internal system of reviewing all decisions of local bodies as to the possession and control of church property, (b) PCUS has set up an internal mechanism for settling disputes and deciding who the true congregation of each church is, and (c) the highest governing body of PCUS has specifically declared that that internal mechanism governs church property disputes.

Thus, even though every member of this Court framed the question in the case to be which faction of the Vineville congregation is entitled to possess and enjoy the church property, and even though PCUS identified that faction through proper church channels, previously agreed to by *all* members who had joined the church, the two-judge opinion below decrees that PCUS cannot practice its religion in this fashion.

This is a clear violation of the Free Exercise and Establishment Clauses of the First Amendment. It is not up to the courts to structure the form or content of a particular religion, so long as that religion does not run afoul of otherwise valid secular laws, which is clearly not the case here. By decreeing that PCUS *must* either own or directly control local church property or forever forego any type of control over decisions relating to that property, the two-judge opinion has crossed the constitutional barrier.[14] It has either prevented petitioners from

[14] The effect of the two-judge opinion is particularly burdensome because of its retroactive effect. This Court in its opinion reached the following conclusion in regard to the infringement of petitioners' free exercise rights because of possible retroactive application of neutral principles:

> Given that the Georgia Supreme Court clearly enunciated its intent to follow the neutral principles analysis in *Presbyterian Church II* and *Carnes*, this case does not involve a claim that retroactive application of a neutral principles approach infringes free exercise rights. [App. 33a, n.4.]

With great respect, we submit that the Georgia two-judge opinion has now made clear that the so-called "neutral principles" formerly followed by the Georgia court are completely at odds with the principles purportedly now being followed, and that therefore petitioners' free exercise rights are very much in issue.

First, of course, *Presbyterian Church II* and *Carnes* involved the question of whether an express or implied trust existed in favor of the mother church. No such issue is or ever has been involved in the instant case. But much more importantly, the two-judge opinion concedes that prior to this Court's decision ordering remand, "[a]ccepting the dictates of a church court that decided which faction had the right of use and enjoyment of such property, based upon church court resolution of matters of religious doctrine or faith, was perceived by this court as being contrary to the spirit of controlling law." App. 50a-51a.

In other words, while petitioners and others had been proceeding on the assumption that PCUS' church court decisions were binding on civil courts, the Georgia Supreme Court had been proceeding on exactly the opposite assumption—that such church court decisions could *not* be recognized or enforced, and in fact were contrary to law. This Court has now made clear that both parties were wrong: church court decisions may not necessarily be binding, depending on the circumstances, but at the same time, civil courts *may* choose to follow and enforce them, regardless of the circumstances.

Since the Georgia Supreme Court in *Presbyterian Church II* and *Carnes* was dealing with issues not relevant here, and since that court's view of the law at the time was in error in respect to church court decisions, we respectfully submit that an entirely new rule has been applied to petitioners for the first time in Georgia and that the retroactive application of that rule to this case deprives petitioners of their free exercise rights.

The same result is reached by a different route. The two-judge decision below is the *first* instance in which the "presumptive rule of majority representation" has been adopted or even suggested in Georgia, and the method by which that rule may be overcome was not stated until after the case reached this Court and was remanded. Therefore, petitioners have never been aware of a need to or, indeed, had an opportunity to "specify what is to happen to church property in the event of a particular contingency * * *," as this Court said religious societies should have an opportunity to do. App. 30a.

practicing the religion of their choice or forced them to practice a religion not of their choice. Regardless of which Clause of the First Amendment is invoked—Free Exercise or Establishment—the constitutional violation is clear.

Moreover, the two-judge opinion construes a Georgia statute in a way which infringes still another of petitioners' constitutional rights—the right to equal protection of the laws. As previously discussed, the opinion states (App. 51a) that Georgia Code Ann. § 22-5504, to which this Court made reference in its opinion (App. 35a, n.6), applies only to churches having a congregational form of government. Although the two-judge opinion cites for this proposition a state case which simply does not support it,[15] we recognize the right of Georgia courts to enunciate Georgia law, whether or not supported by precedent. What we do question, however, is whether the result of such a holding does not deprive petitioners of their rights to free exercise of religion and equal protection of the laws.

Section 22-5504 provides in effect that the majority of those who adhere to the organization and doctrines of a religious corporation represent the church, and those who withdraw from the original body relinquish all rights in that church. The first part of this statutory provision is unenforceable in the civil courts, pursuant to *Presbyterian I*,[16] but the second part is still valid law in Georgia.

The two-judge opinion has now ruled that in purely congregational churches—those with the greatest amount

[15] *Sapp* v. *Callaway*, 208 Ga. 805, 69 S.E.2d 734 (1952), dealt with a church which the court deemed to be congregational, but the case in no way ruled or implied that Section 22-5504's predecessor statute applied differently to hierarchical churches. The opinion, parenthetically, was succeeded by a later one in the same case. 210 Ga. 277 , 79 S.E.2d 532 (1954) (jury verdict reversed following remand).

[16] *See* n.2, *supra*.

of local autonomy—persons who withdraw *cannot* take the church property with them, but in churches which are hierarchical in nature—with ascending orders of judicatories and control at the top—persons who withdraw *can* take the church property with them. App. 51a. This is more than a non-sequitur; more accurately, it turns the law on its head. This result denies equal protection of the laws to all those belonging to hierarchical churches in general, and to petitioners in particular, for it does not allow them to bind themselves to a church structure designed to prevent church property from being taken from them by dissenters,[17] while allowing just such an option to those belonging to congregational faiths.

The two types of faith are treated differently by the State with absolutely no rational basis to support the difference. On the one hand, congregationalists are given a protection which their faith does not seek, and, on the other hand, the hierarchicalists are denied a protection which their faith is designed to foster. The delineation adopted by the two-judge opinion thus not only unfairly discriminates against petitioners but prevents them from practicing their religion as they legitimately choose to do.

[17] *See Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 728-729 (1871).

CONCLUSION

We respectfully urge the Court, for all of the reasons set forth above, to grant a writ of certiorari, to reverse the decision below, and to remand the case to the Supreme Court of Georgia with appropriate instructions.

Respectfully submitted,

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APPENDIX

R. W. JONES, SR., et al.

vs.

CHARLES T. WOLF, et al.

Civil Action File 45787 D-2

Bibb Superior Court
In Equity

DECREE

This unfortunate litigation is between two factions of the Vineville Presbyterian Church, Macon, Georgia, plaintiffs being the minority faction. In their class action plaintiffs contend that the Presbyterian Church in the United States (TPCUS) is a Hierarchical Church with a connectional form of government in which they were members and the Vineville Presbyterian Church (VPC) a Local Unit for many years; that the defendants have withdrawn from TPCUS and have notified the Macon-Augusta Presbytery of the adoption of a resolution adopted by a majority of the congregation of the VPC purporting to withdraw the Local Church Unit from TPCUS. Its pastor withdrew contemporaneously from the jurisdiction of said church. Defendants then united with the Presbyterian Church in America (TPCA).

Plaintiffs allege that a commission duly authorized by the Church Courts of TPCUS pursuant to its Book of Church Order decreed that defendants and the class they represent are no longer officers and members of TPCUS and that plaintiffs and the class they represent were the true members of said church. No appeal was taken to any higher Church Court of TPCUS.

Plaintiffs contend that they are the proper trustees of VPC, that defendants having withdrawn from TPCUS

and united with a different church organization are acting illegally in continuing over plaintiffs' protest to maintain possession, dominion and control over the Church Edifice and other properties of VPC to the exclusion of Plaintiffs as true representatives and trustees of TPCUS.

Plantiffs seek declaratory judgment adjudicating their rights in the premises and for a permanent injunction preventing defendants and the class they represent from continuing to use church property of VPC in any manner other than as a unit of TPCUS and from any dominion over said property in such manner as to prevent plaintiffs and the class they represent from utilizing and operating the same as a Local Unit of TPCUS. Detailed appropriate prayers for relief accompany the Complaint.

The defendants filed an Answer containing Seven Claimed Defenses.

The First Defense asserts that the Complaint fails to state a proper claim upon which relief can be granted.

In the Second Defense defendants deny that TPCUS is a Hierarchical Church although they admit it is generally recognized as having a "connectional form of government." In this Defense they respond to the factual allegations of the Complaint generally admitting the events and allegations set out therein but factually asserting that defendants and their class had a right to withdraw from TPCUS upon appropriate resolution of the Congregation as was done, that the Church Court of TPCUS did not have authority with regard to the property of VPC nor any right to name any of plaintiffs as trustees of VPC as it tried to do, that defendants have lawful possession, dominion and control over the VPC property and that they and the VPC are properly affiliated with TPCA. Defendants deny plaintiffs are entitled to any relief.

The Third through Seventh Defenses raise a number of assertions which will not be discussed in detail except to say that defendants contend that the title to the church property of VPC belongs to this local church as a corporation free of any control from plaintiffs as representatives of their class or as trustees of TPCUS. Defendants set out in detail the history of title acquisition by VPC.

Defendants pray that the prayers of plaintiffs be denied and that an instrument filed by plaintiffs purporting to constitute them as trustees of VPC be declared void and of no effect by the Court.

The Parties through their Counsel of record entered into a written stipulation of facts which was approved by the Presiding Judge and filed as part of the record in the case. The Stipulation deals comprehensively with the facts essential to a determination of the matter and allows the Court to proceed with a final decision without the intervention of a jury. No additional evidence is deemed necessary by the Court and the controversy is ripe for final determination.

The Stipulation of Facts is by reference incorporated into this Order and adopted in toto as findings of fact by the Court.

In summary, the Court finds the following facts.

VPC was organized in 1904 and its membership duly submitted a petition to the Augusta-Macon Presbytery of TPCUS and was by it established as a Member-Unit of that Presbytery.

TPCUS has a connectional form of government and organization as set forth in the "Book of Church Order," the "Fourteenth Printing 1972," being the Book in effect in 1973 when the events under investigation occurred. Generally, TPCUS is organized so that a Local Unit is governed by its Session; the Sessions of the Local Church

are governed by what is known as a Presbytery which governs several Local Church Units in a particular area; the Presbytery is governed by a Synod which is over all Local Units and Presbyteries within a State; and the Synods are governed by the General Assemblies [sic] which in turn governs all Local Church Units, Presbyteries and Synods in the United States.

Title to the VPC property was acquired by conveyances shown as Exhibits B, C, C1, D, E, F, G, H and I (stipulation of facts) all being to named trustees of VPC or simply to VPC. VPC was incorporated in 1915 and its charter has since been revived and renewed (Exhibits J and K). Since 1908 VPC has repeatedly borrowed money on its property under authority of resolutions adopted by its congregation evidenced by security deeds signed by trustees of VPC.

In 1973 plaintiffs and defendants and the classes they represent were members of VPC which in turn was a Member-Unit of the Augusta-Macon Presbytery of TPCUS. On May 27 of that year while a quorum of the congregation of VPC was present, members of the class represented by defendants presented a resolution (Exhibit R) duly adopted by 165 (defendant class members) voting in favor while 94 (plaintiff class members) voted against it. This resolution purported to separate VPC and its property from any affiliation with the Augusta-Macon Presbytery and TPCUS and to vest all control with the local church as an independent, self-governing church pending formation of a new Presbyterian organization and denomination different in certain particulars from TPCUS. The Augusta-Macon Presbytery was notified of this action on May 27, 1973 (Exhibit S) and the local pastor of VPC also advised of his relinquishment of membership in the Presbytery (Exhibit T).

Thereupon the Augusta-Macon Presbytery declared plaintiffs and their class the true congregation of VPC and withdrew from defendants their class and the pastor all authority derived from TPCUS and purported to forfeit all their ecclesiastical privileges and rights of property of the congregation (Exhibit U).

Thereafter, defendants and their class in VPC by appropriate vote united with the Central Georgia Presbytery of the Presbyterian Churches of America, which is not affiliated with TPCUS in any manner.

Since May 27, 1973, defendants have al [sic] all times retained possession, dominion and control of all property and assets of VPC to the complete exclusion of plaintiffs and the class they represent as a Local Unit of TPCUS and plaintiffs have carried on their church activities elsewhere than at the VPC location of 2193 Vineville Avenue, Macon, Georgia.

Defendants have caused the names of plaintiffs and their class to be stricken from the rolls of VPC and have so notified plaintiffs (Exhibit V).

Subsequent to the Book of Church Order "Fourteenth Printing 1972," changes were made in the Book of Church Order by the 112*th* General Assembly TPCUS being the "Fifteenth Printing 1975" by the addition of a new section added to Chapter 4 entitled "The Organization of a Particular Church" which new section states that the relationship to TPCUS of a particular church can be severed only by constitutional action on the part of the appropriate Presbytery (Exhibit W).

The United Presbyterian Church in the United States of America is a Presbyterian body which is not connected with TPCUS and which has its own rules dealing with the property of local churches (Exhibit X). Moreover, the United Methodist Church has its Book of Dis-

cipline by which it is governed, including rules dealing with church property (Exhibit Y). The Methodist Church is in no way affiliation [sic] with TPCUS.

The defendants do not claim any right of possession of any church property by virtue of any claim arising under *Ga. Code Ann.* Sec. 22-5504 or 22-5506.

It is agreed that the Vineville Presbyterian Church, a non-profit Georgia Corporation shall be bound by the judgment to be rendered in this case to the same extent as if made a party.

The Court finds that the controversy is appropriate for Declaratory Judgment procedure in that a bona fide controversy exists and the rights of plaintiffs in and to VPC property ought to be determined. *Ga. Code Ann. Sec.* 110-1101 and 1102.

The Court finds that from the point of view of the plaintiffs and the defendants the proceeding is a proper class action under *Ga. Code Ann.* 81A-123(a)(2). Each side fairly represents the class it purports to represent and no additional parties are essential for a fair, full determination of the issues presented.

This controversy involves a dispute with respect to a connectional or hierarchical rather than a congregational church denominational organization. It is in the former type of church structure that difficulties arise as to the right to control church properties as between the central church organization (or a faction claiming under it) and the local church congregation when the latter become dissatisfied with the affiliation and seek for whatever reason to withdraw. Both sides through their able attorneys trace well the history of church litigation in this area in the English as well as American States and Federal appellate court decisions. However, in the opinion of this Court an examination of the following cases is

dispositive of the legal issues: *Presbyterian Church in the U.S.* v. *Eastern Heights Presbyterian Church*, 224 Ga.61, rev'd. 393 U.S. 440; *Presbyterian Church in the U.S.* v. *Eastern Heights Presbyterian Church*, 225 Ga. 259; *Maryland & Virginia Eldership of the Churches of God* v. *Church of God at Sharpsburg*, 396 U.S. 367; and *Carnes* v. *Smith*, 236 Ga. 30.

In the *Eastern Heights* litigation the U.S. Supreme Court held that civil courts could resolve property disputes, but that the United States Constitution forbids them from determining ecclesiastical questions in the process. Civil courts must resolve church disputes on neutral principles of law developed for use in all property disputes. This holding emasculated the former Georgia rule in connective form church cases that there was an implied trust on local church property for the benefit of the general church, but that as a part of this rule the impiled trust was conditioned on the general church adhering to its tenets of faith and practice existing at the time of affiliation by the local church. Thereafter, in final disposition of that case the Georgia Supreme Court held that the entire trust theory must fall, condition and all. That theory having fallen and no other basis for a trust in favor of the general church being found in the deeds to the property, or otherwise implied under the statutes, *or required by the constitution of the general church* the property was awarded to the local churches.

In the *Carnes* litigation (a 4-3 decision) the Court considered a Methodist church schism which fit snugly in one of the exception niches underlined above through which the association with a central connectional church by a local church could as a matter of doctrine, law or constitution of such central (general) church necessarily imply a trust. More than a mere connectional relationship between the local and general church must exist.

Just what criteria could be used to resolve property disputes in this area of litigation was clarified to a degree in the *Churches of God* case by the Supreme Court of the United States by denial of review of a Maryland Court of Appeals decision on the basis of civil property law rules which, like Georgia since the *Presbyterian Church* cases, has no implied trust doctrine. Inquiry was not made into religious doctrine which would violate the First Amendment. The Maryland Court looked to the language of the deeds, applicable state statutes regarding religious corporations, the connectional church constitution and the corporate charters of the local churches. This practice was adopted by the Georgia Supreme Court in *Carnes*.

However, upon application of these criteria, the decision in *Carnes* went off in the opposite direction and the majority of the Court, applying Code Sec. 22-5507 and 5508, found the Book of Discipline of the United Methodist Church to require that title to all real property owned or acquired by a local church shall be held for the use and benefit of the local church *and the United Methodist Church*. The Book of Discipline of the Church went on to provide that the absence of a suggested trust provision would not relieve the local church of connectional responsibility and accountability to the United Methodist Church provided certain conditions (i.e. use of name of the United Methodist Church, acceptance of pastorate of ministers appointed by the central church, etc.) were met.

Applying the neutral principles of law applicable in Georgia to the association between the local church in *Carnes* with the United Methodist Church the Court found an implied trust intended by the founders of the local church. By application of the Book of Discipline to the relationship, the Court found it would not be fair to have a local church take advantage of the use of polity, name, finances and other aspects of its operation

without being bound by the implied trust provisions of its constitution and rules. Citing authority from other jurisdictions, the majority of the Court ruled the local church may not participate in the functioning of the central church, yet disclaim affiliation so as to shield from obligation valuable property acquired by the local church before or during affiliation.

Applying these rules to the controversy at hand, there is nothing in the deeds, the applicable Georgia statutes regarding religious corporations, TPCUS Book of Church Order or Discipline, or the Corporate Charter of the VPC to indicate any express or implied trust in favor of any group other than the local congregation of VPC. Moreover, Section 6-2 of the Book of Church Order of TPCUS provides specifically that a church corporation can elect trustees to hold and manage local church property and can buy, sell and mortgage such property under authority of such corporation. This policy is inconsistent with trusteeship on behalf of the central church but is consistent with the way defendants and VPC have acted in relation to TPCUS as shown in the record before the Court. No one other than local members paid any funds to acquire the VPC properties.

This case falls squarely under the authority of the final chapter of the *Eastern Heights* litigation at 225 Ga. 259.

This Court concludes as a matter of law that legal title to all the church property of VPC is vested in the local church which is represented by defendants. TPCUS had no authority by resolution to constitute plaintiffs as trustees or as the true congregation for the purpose of creating a trust relationship with respect to the church property of VPC when none previously existed, expressly or by implication and insofar as such action (Exhibit F) [sic] sought to confer any rights of property upon plaintiffs or those they represent, such declaration is de-

clared void and of no force and effect. The 1975 change in the Book of Church Order of TPCUS may not be considered.

It is not deemed necessary to comment upon many other points and issues sought to be raised by counsel in their briefs.

Final Judgment on the merits of the Complaint is granted to defendants and against plaintiffs. The Complaint is dismissed and defendants are discharged with their costs.

So ordered this 29*th* day of September, 1977.

/s/ James B. O'Connor
JAMES B. O'CONNOR
Judge
Oconee Judicial Circuit
Presiding in Bibb Superior Court

Filed Sep. 30, 1977, Clerk's Office, Superior Court, Bibb County, Georgia.

/s/ Carolyn Hattaway, D.C.

IN THE SUPREME COURT OF GEORGIA

Decided: Apr. 4, 1978

33126

JONES ET AL.

v.

WOLF ET AL.

NICHOLS, Chief Justice.

This is a title dispute arising over which faction retains the property in a church schism.

On May 27, 1973, a resolution was presented to the congregation of the Vineville Presbyterian Church of Macon seeking to withdraw the church and its property from any affiliation with the Augusta-Macon Presbytery and the Presbyterian Church in the United States and to become an independent, self-governing church pending formation of a new Presbyterian organization and denomination. With a quorum present, the resolution carried by a vote of 165 to 94.

On the same day the Augusta-Macon Presbytery was notified of the resolution, and the pastor of the Vineville church advised the Presbytery of his relinquishment of membership in the Presbytery. Subsequently, a commission of the Presbytery declared those voting in the minority to be the true congregation of the Vineville church and withdrew from the majority as well as the pastor all authority derived from the Presbyterian Church in the United States.

Thereafter, the majority (appellees in the present case) united with the Central Georgia Presbytery of the Pres-

byterian Church of America, which has no affiliation with the Presbyterian Church in the United States.

Since the vote to withdraw from the Presbyterian Church in the United States, the appellees have at all times retained possession and control of all property and assets of the Vineville church and have caused the names of the minority (appellants in the present case) to be stricken from the church rolls.

In an effort to have the property issue resolved in federal court, the appellants filed an action in the United States District Court for the Middle District of Georgia, which action was dismissed for lack of jurisdiction. That dismissal was affirmed by the United States Fifth Circuit Court of Appeals. Lucas et al. v. Hope et al., 515 F2d 234 (1975); rehearing denied 523 F2d 1055 (1975). The United States Supreme Court denied certiorari. Lucas et al. v. Hope et al., 424 US 967 (1976).

Thereafter, appellants brought this action seeking declaratory judgment adjudicating their rights and seeking a permanent injunction preventing appellees from continuing to use the church property in any manner other than as a unit of the Presbyterian Church in the United States. Neither the Augusta-Macon Presbytery nor the Presbyterian Church in the United States is a party to the action.

The case was submitted on briefs and stipulated facts and was decided by the court without the intervention of a jury. After examining all facts essential to the making of a determination, the trial court ruled in favor of appellees and dismissed appellants' complaint. That judgment is affirmed.

Since Presbyterian Church in the United States et al. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church et al., 393 US 440 (89 SC 601, 21 LE2d 658) (1969), civil courts have been forbidden, under First

Amendment principles as applied to the states by the Fourteenth Amendment, from resolving church property disputes on questions of an ecclesiastical nature. That case was decided on certiorari from this court and on remand this court abandoned in its entirety the theory that imposed an implied trust on property of a local connectional church for the benefit of the general church, conditioned upon adherence to tenets of faith. *Presbyterian Church in the United States et al* v. *Eastern Heights Presbyterian Church*, 225 Ga. 259 (167 SE2d 658) (1969). The decision of the Supreme Court of the United States stated there are neutral principles of law, developed for use in all property disputes, which can be applied in resolving church property disputes without resolving underlying controversies over religious doctrine.

In *Carnes* v. *Smith*, 236 Ga. 30 (222 SE2d 322) (1976), this court examined developing case law to determine the "neutral principles of law" to be applied in settling church property disputes. *Carnes* relied upon the case of Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, 396 US 367 (90 SC 499, 24 LE2d 582) (1970), in which the United States Supreme Court sanctioned examination of language in deeds, applicable state statutes regarding religious corporations, provisions in church constitutions, and the corporate charter of the local church as "neutral principles of law" that appropriately may be considered. The general church constitution in the case at bar is the *Book of Church Order*, Fourteenth Printing, 1972, which was in effect at the time this dispute arose.

The appellants enumerate one error: The trial court erred in finding in favor of the appellees-defendants and in dismissing the complaint of the appellants-plaintiffs.

Appellants contend that because it is stipulated that the appellants and the class they represent are those who remain loyal to the Presbyterian Church in the

United States, it follows therefore that they are entitled to the property. In reality, appellants merely are seeking to return to the implied trust theory rejected by the court in *Presbyterian Church in the United States et al.* v. *Eastern Heights Presbyterian Church*, 225 Ga. 259 (167 SE2d 658) (1969) and are seeking to abandon entirely the "neutral principles" enunciated in *Carnes*. Under *Carnes* more than a mere connectional relationship between the local and general churches must exist to give rise to property rights in the general church.

Applying *Carnes*, does more than a mere connectional relationship between the local and general churches exist according to the record? An examination of the deeds, from the first (1908), shows with but one exception that the grantees were named trustees for the Vineville church taking for the proper use of the Vineville Presbyterian Church. The one exception is a deed naming the Vineville church itself as grantee. There is no language giving the general church any interest in the property. An examination of security deeds executed on behalf of the church (the church borrowed money on numerous occasions) fails to show any grant or acquiescence by any party other than the trustees acting for the Vineville church.

The corporation charter of April 29, 1915, and subsequent revivals, fail to show any interest in the corporation other than that of the congregation.

Appellants rely heavily on Code Ann. §§ 22-5507 and 22-5508 which mandate that property conveyed to a church is vested according to the mode of church government or such rules of discipline exercised by such churches or religious societies respectively, and upon *Carnes*, which held that "The statutes thus mandate that the church property be held according to the terms of the church government." 236 Ga. at 38. However,

those statutes do not purport to give a general church any rights in local church property other than those rights set forth in the documents of church government. The *Book of Church Order*, Chapter 6, entitled "Incorporation and Property of a Particular Church," Sections 6-1, 6-2 and 6-3, fails to give rise to an express trust or any implied trust as defined by the General Assembly. Section 6-2, dealing with incorporated churches within the Presbytery, specifically provides that a church corporation may elect officers to hold and manage local church property and may buy, sell and mortgage such property under the authority and direction of such corporation, the membership of which includes every member of the congregation.

Appellants cite other sections of the *Book of Order* pertaining to church courts. These deal with faith and the internal structure of the church but do not deal with property rights.

This case is distinguishable from *Carnes*, in which this court found an implied trust in favor of the general church, the United Methodist Church, because its book of discipline provided that "title to all real property now owned or hereafter acquired by an unincorporated local church, . . . shall be held by and/or conveyed to its duly elected trustees . . . and their successors in office, . . . in trust, nevertheless, for the use and benefit of such local church and The United Methodist Church." No language of similar import is to be found in the Presbyterian *Book of Church Order* contained in the stipulations of the parties in the present case.

The trial court found that the Vineville Presbyterian Church had been a connectional church within the Augusta-Macon Presbytery and the Presbyterian Church in the United States but correctly held that "more than a mere connectional relationship between the local and general church must exist" to give rise to property

rights in the general church. See *Carnes* v. *Smith*, 236 Ga. 30 (222 SE2d 322) (1976).

The trial court concluded that as a matter of law, the legal title to all the church property of the Vineville Presbyterian Church is vested in the local church congregation represented by the appellees.

The single enumeration of error is without merit.

Judgment affirmed. All the Justices concur, except Undercofler, P.J., who concurs in the judgment only.

SUPREME COURT OF GEORGIA

#45787-D-2

ATLANTA, April 4, 1978

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

R. W. JONES, SR., et al.

v.

CHARLES T. WOLF, et al.

This case came before this court upon an appeal from the Superior Court of Bibb County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur, except Undercofler, P.J., concurs in judgment only.

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE, ATLANTA 4/21/78

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Filed May 11, 1978, Clerk's Office, Superior Court of Bibb County, Georgia.

/s/ Carolyn Hattaway, D.C.

Witness my signature and seal of said court hereto affixed the day and year last above written.

/s/ Joline B. Williams
Clerk

CLERK'S OFFICE
SUPREME COURT OF GEORGIA

Serial No. 215 Decision Date: 4/4/78

Judge: C.J. Case No. 33126

R. W. JONES, SR., et al.

vs.

CHARLES T. WOLF, et al.

MOTION FOR REHEARING

Denied—4/19/78

BIBB SUPERIOR COURT

No. 45787-D 2

R. W. JONES, SR., et al.

vs.

CHARLES T. WOLF, et al.

JUDGMENT

GEORGIA, BIBB COUNTY

IN THE SUPERIOR COURT OF SAID COUNTY:

The attached Remittitur having been received by the Court;

It is, thereupon, ordered that said Remittitur be entered on the minutes, and Judgment of the SUPREME COURT—be made the Judgment of this Court, and that the APPELLANT-APPELLEE, recover of APPELLANT-APPELLEE, for use of the officers of court the sum of $———————— Costs, to be taxed by the Clerk.

In open Court this 10 day of May, 1978.

/s/ [Illegible]
Judge
Superior Courts
Oconee Circuit

Filed May 11, 1978, Clerk's Office, Superior Court of Bibb County, Georgia.

/s/ Carolyn Hattaway, D.C.

SUPREME COURT OF THE UNITED STATES

Syllabus

JONES ET AL.

v.

WOLF ET AL.

CERTIORARI TO THE SUPREME COURT OF GEORGIA

No. 78-91

Argued January 16, 1979—Decided July 2, 1979

This case involves a dispute over the ownership of church property following a schism in a local church affiliated with a hierarchical church organization. The property of the Vineville Presbyterian Church of Macon, Ga. (local church), is held in the names of the local church or of trustees for the local church. That church, however, was established as a member of the Augusta-Macon Presbytery of the Presbyterian Church in the United States (PCUS), which has a generally hierarchical form of government. Under the polity of the PCUS, the government of the local church is committed to its Session in the first instance, but the actions of this "court" are subject to the review and control of the higher church courts (the Presbytery, Synod, and General Assembly). At a congregational meeting attended by a quorum of the local church's members, 164 of them voted to separate from the PCUS, while 94 opposed the resolution. The majority then united with another denomination and has retained possession of the local church property. The Augusta-Macon Presbytery appointed a commission to investigate the dispute, and

the commission eventually issued a ruling declaring that the minority faction constituted the "true congregation" of the local church, and withdrawing from the majority faction "all authority to exercise office derived from the [PCUS]." Representatives of the minority faction brought this class action in state court, seeking declaratory and injunctive orders establishing their right to exclusive possession and use of the local church's property as a member of the PCUS. The trial court, purporting to apply Georgia's "neutral principles of law" approach to church property disputes, granted judgment for the majority. The Georgia Supreme Court affirmed, holding that the trial court had correctly stated and applied Georgia law and rejecting the minority's challenge based on the First and Fourteenth Amendments.

Held:

1. As a means of adjudicating a church property dispute, a State is constitutionally entitled to adopt a "neutral principles of law" analysis involving consideration of the deeds, state statutes governing the holding of church property, the local church's charter, and the general church's constitution. The First Amendment does not require the States to adopt a rule of compulsory deference to religious authority in resolving church property disputes, even where no issue of doctrinal controversy is involved. Pp. 6-10.

2. Here, the case must be remanded since the grounds for the Georgia courts' decision that the majority faction represents the local church were not articulated, both the trial court and the Georgia Supreme Court having applied Georgia's neutral principles analysis as developed in cases involving church property disputes between general churches and entire local congregations, without alluding to the significant com-

plicating factor in the present case that the local congregation was itself divided. If in fact Georgia has adopted a presumptive rule of majority representation, defeasible upon a showing that the identity of the local church is to be determined by some other means, this would be consistent with both the neutral principles analysis and the First Amendment. However, there are at least some indications that under Georgia law the process of identifying the faction that represents a local church involves considerations of religious doctrine and polity, and thus if Georgia law provides that the identity of the local church here is to be determined according to the laws and regulations of the PCUS, then the First Amendment requires that the Georgia courts give deference to the presbyterial commission's determination that the minority faction represents the "true congregation." Pp. 10-14.

241 Ga. 208, 243 S.E. 2d 860, vacated and remanded.

BLACKMUN, J., delivered the opinion of the Court, in which BRENNAN, MARSHALL, REHNQUIST, and STEVENS, JJ., joined. POWELL, J., filed a dissenting opinion, in which BURGER, C.J., and STEWART and WHITE, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 78-91

R. W. JONES, SR., ET AL.,
Petitioners,
v.
CHARLES T. WOLF, ET AL.

On Writ of Certiorari to the Supreme Court of Georgia

[July 2, 1979]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case involves a dispute over the ownership of church property following a schism in a local church affiliated with a hierarchical church organization. The question for decision is whether civil courts, consistent with the First and Fourteenth Amendments to the Constitution, may resolve the dispute on the basis of "neutral principles of law," or whether they must defer to the resolution of an authoritative tribunal of the hierarchical church.

I

The Vineville Presbyterian Church of Macon, Ga., was organized in 1904, and first incorporated in 1915. Its corporate charter lapsed in 1935, but was revived and renewed in 1939, and continues in effect at the present time.

The property at issue and on which the church is located was acquired in three transactions, and is evi-

denced by conveyances to the "Trustees of [or "for"] Vineville Presbyterian Church and their successors in office," App. 251, 253, or simply to the "Vineville Presbyterian Church." *Id.*, at 249. The funds used to acquire the property were contributed entirely by local church members. Pursuant to resolutions adopted by the congregation, the church repeatedly has borrowed money on the property. This indebtedness is evidenced by security deeds variously issued in the name of the "Trustees of the Vineville Presbyterian Church," *e.g.*, *id.*, at 278, or, again, simply the "Vineville Presbyterian Church." *Id.*, at 299.

In the same year it was organized, the Vineville church was established as a member church of the Augusta-Macon Presbytery of the Presbyterian Church in the United States (PCUS). The PCUS has a generally hierarchical or connectional form of government, as contrasted with a congregational form. Under the polity of the PCUS, the government of the local church is committed to its Session in the first instance, but the actions of this assembly or "court" are subject to the review and control of the higher church courts, the Presbytery, Synod, and General Assembly, respectively. The powers and duties of each level of the hierarchy are set forth in the constitution of the PCUS, the Book of Church Order, which is part of the record in the present case.

On May 27, 1973, at a congregational meeting of the Vineville church attended by a quorum of its duly enrolled members, 164 of them, including the pastor, voted to separate from the PCUS. Ninety-four members opposed the resolution. The majority immediately informed the PCUS of the action, and then united with another denomination, the Presbyterian Church in America. Although the minority remained on the church rolls for three years, they ceased to participate in the affairs of the Vineville church and conducted their religious activities elsewhere.

In response to the schism within the Vineville congregation, the Augusta-Macon Presbytery appointed a commission to investigate the dispute and, if possible, to resolve it. The commission eventually issued a written ruling declaring that the minority faction constituted "the true congregation of Vineville Presbyterian Church," and withdrawing from the majority faction "all authority to exercise office derived from the [PCUS]." App. 235. The majority took no part in the commission's inquiry, and did not appeal its ruling to a higher PCUS tribunal.

Representatives of the minority faction sought relief in federal court, but their complaint was dismissed for want of jurisdiction. *Lucas* v. *Hope*, 515 F. 2d 234 (CA5 1975), cert. denied, 424 U.S. 967 (1976). They then brought this class action in state court, seeking declaratory and injunctive orders establishing their right to exclusive possession and use of the Vineville church property as a member congregation of the PCUS. The trial court, purporting to apply Georgia's "neutral principles of law" approach to church property disputes, granted judgment for the majority. The Supreme Court of Georgia, holding that the trial court had correctly stated and applied Georgia law, and rejecting the minority's challenge based on the First and Fourteenth Amendment, affirmed. 241 Ga. 208, 243 S.E. 2d 860 (1978). We granted a writ of certiorari. 439 U.S. —— (1978).

II

Georgia's approach to church property litigation has evolved in response to *Presbyterian Church* v. *Hull Church*, 393 U.S. 440 (1969) (*Presbyterian Church I*), rev'g *Presbyterian Church* v. *Eastern Heights Church*, 224 Ga. 61, 159 S.E. 2d 690 (1968). That case was a property dispute between the PCUS and two local Georgia churches that had withdrawn from the PCUS. The

Georgia Supreme Court resolved the controversy by applying a theory of implied trust, whereby the property of a local church affiliated with a hierarchical church organization was deemed to be held in trust for the general church, provided the general church had not "substantially abandoned" the tenets of faith and practice as they existed at the time of affiliation.[1] This Court reversed, holding that Georgia would have to find some other way of resolving church property disputes that did not draw the state courts into religious controversies. The Court did not specify what that method should be, although it noted in passing that "there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded." 393 U.S., at 449.

On remand, the Georgia Supreme Court concluded that, without the departure-from-doctrine element, the implied trust theory would have to be abandoned in its entirety. *Presbyterian Church* v. *Eastern Heights Church*, 225 Ga. 259, 167 S.E. 2d 658 (1969) (*Presbyterian Church II*). In its place, the court adopted what is now known as the "neutral principles law" method for resolving church property disputes. The court examined the deeds to the properties, the state statutes dealing with implied trusts, Ga. Code §§ 108-106, 108-107, and the Book of Church Order, to determine whether there was any basis for a trust in favor of the general church. Finding nothing that would give rise to a trust in any of these documents, the court awarded the property on the basis of legal title, which was in the local church, or in the names of trustees for the local church. 224 Ga., at 261, 167 S.E. 2d, at 660. Review was again sought in this Court, but was denied. 396 U.S. 1401 (1970).

[1] This is sometimes referred to as the "English approach" to resolving property disputes in hierachical churches. See *Presbyterian Church* v. *Hull Church*, 393 U.S. 440, 443, and n.2 (1969); *Watson* v. *Jones*, 13 Wall. 679, 727-728 (1871).

The neutral principles analysis was further refined by the Georgia Supreme Court in *Carnes* v. *Smith*, 236 Ga. 30, 222 S.E. 2d 322 (1976), cert. denied, 429 U.S. 868 (1976). That case concerned a property dispute between The United Methodist Church and a local congregation that had withdrawn from that church. As in *Presbyterian Church II*, the court found no basis for a trust in favor of the general church in the deeds, the corporate charter, or the state statutes dealing with implied trusts. The court observed, however, that the constitution of The United Methodist Church, its Book of Discipline, contained an express trust provision in favor of the general church.[2] On this basis, the church property was awarded to the denominational church. 236 Ga., at 39, 222 S.E. 2d, at 328.

In the present case, the Georgia courts sought to apply the neutral principles analysis of *Presbyterian Church II* and *Carnes* to the facts presented by the Vineville church

[2] The Methodist Book of Discipline, ¶ 1537, requires that

> "title to all real property now owned or hereafter acquired by an unincorporated local church . . . shall be held by and/or conveyed to its duly elected trustees . . . and their successors in office . . . in trust, nevertheless, for the use and benefit of such local church *and of The United Methodist Church*. Every instrument of conveyance of real estate shall contain the appropriate trust clause as set forth in the Discipline (¶ 1503)" (emphasis added).

Although in *Carnes* the deeds to the local church did not contain the required trust clause, The Book of Discipline provided that in the absence of a trust clause, a trust in favor of The United Methodist Church was to be implied if (a) the conveyance was to the trustees of a local church or agency of any predecessor to The United Methodist Church, or (b) the local church used the name of any predecessor to The United Methodist Church and was know to the community as a part of the denomination, or (c) the local church accepted the pastorate of ministers appointed by any predecessor to The United Methodist Church. The Book of Discipline, ¶ 1503.5. The local church in *Carnes* satisfied all three of these conditions. 236 Ga., at 39, 222 S.E.2d, at 328.

controversy. Here, as in those two earlier cases, the deeds conveyed the property to the local church. Here, as in the earlier cases, neither the state statutes dealing with implied trust, nor the corporate charter of the Vineville church, indicated that the general church had any interest in the property. And here, as in *Presbyterian Church II*, but in contrast to *Carnes*, the provisions of the constitution of the general church, the Book of Church Order, concerning the ownership and control of property failed to reveal any language of trust in favor of the general church. The courts accordingly held that legal title to the property of the Vineville church was vested in the local congregation. Without further analysis or elaboration, they further decreed that the local congregation was represented by the majority faction, respondents herein. Pet. for Cert. App. 9a; 241 Ga., at 212, 243 S.E. 2d, at 864.

III

The only question presented by this case is which faction of the formerly united Vineville congregation is entitled to possess and enjoy the property located at 2193 Vineville Avenue in Macon, Ga. There can be little doubt about the general authority of civil courts to resolve this question. The State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively. *Presbyterian Church I*, 393 U.S., at 445.

It is also clear, however, that "the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes." *Id.*, at 449. Most importantly, the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. *Serbian Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 710 (1976); *Md. & Va. Churches* v. *Sharpsburg Church*, 396 U.S. 367, 368

(1970); *Presbyterian Church I*, 393 U.S., at 449. As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization. *Serbian Orthdox Diocese*, 426 U.S. 724-725; cf. *Watson* v. *Jones*, 13 Wall. 679, 733-734 (1871). Subject to these limitations, however, the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes. Indeed, "a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith." *Md. & Va. Churches*, 396 U.S., at 368 (BRENNAN, J., concurring) (emphasis in original).

At least in general outline, we think the "neutral principles of law" approach is consistent with the foregoing constitutional principles. The neutral principles approach was approved in *Md. & Va. Churches, supra*, an appeal from a judgment of the Court of Appeals of Maryland settling a local church property dispute on the basis of the language of the deeds, the terms of the local church charters, the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property. Finding that this analysis entailed "no inquiry into religious doctrine," the Court dismissed the appeal for want of a substantial federal question. 396 U.S., at 368. "Neutral principles of law" also received approving reference in *Presbyterian Church I*, 393 U.S., at 449; in MR. JUSTICE BRENNAN'S concurrence in *Md. & Va. Churches*, 396 U.S., at 370; and in *Serbian Orthodox Diocese*, 426 U.S., at 723 n. 15.[3]

[3] Indeed, even in *Watson* v. *Jones, supra*, a common-law decision heavily relied upon by the dissent, Mr. Justice Miller, in speaking for the Court, stated that, regardless of the form of such govern-

The primary advantages of the neutral principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral principles analysis shares the peculiar genius of private-law systems in general—flexibility in ordering private rights and obligations to reflect the intentions of the parties. Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members.

This is not to say that the application of the neutral principles approach is wholly free of difficulty. The neutral principles method, at least as it has evolved in Georgia, requires a civil court to examine certain religious documents, such as a church constitution, for language of trust in favor of the general church. In undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust. In addition, there may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the pro-

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ment, it would be the "obvious duty" of a civil tribunal to enforce the "express terms" of a deed, will, or other instrument of church property ownership. 13 Wall. at 722-723.

visions relating to the ownership of property. If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body. *Serbian Orthodox Diocese*, 426 U.S., at 709.

On balance, however, the promise of nonentanglement and neutrality inherent in the neutral principles approach more than compensates for what will be occasional problems in application. These problems, in addition, should be gradually eliminated as recognition is given to the obligation of "States, religious organizations, and individuals [to] structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." *Presbyterian Church I*, 393 U.S., at 449. We therefore hold that a State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute.

The dissent would require the States to abandon the neutral principles method, and instead would insist as a matter of constitutional law that whenever a dispute arises over the ownership of church property, civil courts must defer to the "authoritative resolution of the dispute within the church itself." *Post*, at 5. It would require, first, that civil courts review ecclesiastical doctrine and polity to determine where the church has "placed ultimate authority over the use of the church property." *Id.*, at 10. After answering this question, the courts would be required to "determine whether the dispute has been resolved within that structure of government and, if so, what decision has been made." *Id.*, at 10 n. 6. They would then be required to enforce that decision. We cannot agree, however, that the First Amendment requires the States to adopt a rule of compulsory deference to religious authority in resolving church property dis-

putes, even where no issue of doctrinal controversy is involved.

The dissent suggests that a rule of compulsory deference would somehow involve less entanglement of civil courts in matters of religious doctrine, practice, and administration. Under its approach, however, civil courts would always be required to examine the polity and administration of a church to determine which unit of government has ultimate control over church property. In some cases, this task would not prove to be difficult. But in others, the locus of control would be ambiguous, and "a careful examination of the constitutions of the general and local church, as well as other relevant documents, [would] be necessary to ascertain the form of governance adopted by the members of the religious association." *Id.*, at 11. In such cases, the suggested rule would appear to require "a searching and therefore impermissible inquiry into church polity." *Serbian Orthodox Diocese*, 426 U.S., at 723. The neutral principles approach, in contrast, obviates entirely the need for an analysis or examination of ecclesiastical polity or doctrine in settling church property disputes.

The dissent also argues that a rule of compulsory deference is necessary in order to protect the free exercise rights "of those who have formed the association and submitted themselves to its authority." *Id.*, at 8. This argument assumes that the neutral principles method would somehow frustrate the free exercise rights of the members of a religious association. Nothing could be further from the truth. The neutral principles approach cannot be said to "inhibit" the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods. Under the neutral principles approach, the outcome of a church property

dispute is not foreordained. At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.[4]

IV

It remains to be determined whether the Georgia neutral principles analysis was constitutionally applied on the facts of this case. Although both the trial court and the Supreme Court of Georgia viewed the case as involving nothing more than an application of the principles developed in *Presbyterian Church II* and in *Carnes*, the present case contains a significant complicating factor absent in each of those earlier cases. *Presbyterian Church II* and *Carnes* each involved a church property dispute between the general church and the entire local congregation. Here, the local congregation was itself divided between a majority of 164 members who sought to withdraw from the PCUS, and a minority of 94 members who wished to maintain the affiliation. Neither of the state courts alluded to this problem, however; each concluded without discussion or analysis that the title to the property was in the local church and that the local

[4] Given that the Georgia Supreme Court clearly enunciated its intent to follow the neutral principles analysis in *Presbyterian Church II* and *Carnes*, this case does not involve a claim that retroactive application of a neutral principles approach infringes free exercise rights.

church was represented by the majority rather than the minority.

Petitioners earnestly submit that the question of which faction is the true representative of the Vineville church is an ecclesiastical question that cannot be answered by a civil court. At least, it is said, it cannot be answered by a civil court in a case involving a hierarchical church, like the PCUS, where a duly appointed church commission has determined which of the two factions represents the "true congregation." Respondents, in opposition, argue in effect that the Georgia courts did no more than apply the ordinary presumption that, absent some indication to the contrary, a voluntary religious association is represented by a majority of its members.

If in fact Georgia has adopted a presumptive rule of majority representation, defeasible upon a showing that the identity of the local church is to be determined by some other means, we think this would be consistent with both the neutral principles analysis and the First Amendment. Majority rule is generally employed in the governance of religious societies. See *Bouldin* v. *Alexander*, 15 Wall. 131 (1872). Furthermore, the majority faction generally can be identified without resolving any question of religious doctrine or polity. Certainly, there was no dispute in the present case about the identity of the duly enrolled members of the Vineville church when the dispute arose, or about the fact that a quorum was present, or about the final vote. Most importantly, any rule of majority representation can always be overcome, under the neutral principles approach, either by providing, in the corporate charter or the constitution of the general church, that the identity of the local church is to be established in some other way, or by providing that the church property is held in trust for the general church and those who remain loyal to it. Indeed, the

State may adopt any method of overcoming the majoritarian presumption, so long as the use of that method does not impair free exercise rights or entangle the civil courts in matters of religious controversy.[5]

Neither the trial court nor the Supreme Court of Georgia, however, explicitly stated that it was adopting a presumptive rule of majority representation.[6] Moreover, there are at least some indications that under Georgia law the process of identifying the faction that represents the Vineville church involves considerations of religious doctrine and polity. Georgia law requires that "church property be held according to the terms of the church government," and provides that a local church affiliated with a hierarchical religious association "is part of the whole body of the general church and is subject to the higher authority of the organization and its law and regulations." *Carnes* v. *Smith*, 236 Ga., at 33, 38, 222 S.E.2d, at 325, 328; see Ga. Code §§ 22-5507, 22-5508. All this may suggest that the identity of the "Vineville Presbyterian Church" named in the deeds must be determined according to terms of the Book of Church Order, which sets out the laws and regulations of churches affili-

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[5] If the Georgia Supreme Court adopts a rule of presumptive majority representation on remand, then it should also specify how, under Georgia law, that presumption may be overcome. Because these critical issues of state law remain undetermined, we, unlike the dissent, express no view as to the ultimate outcome of the controversy if the Georgia Supreme Court adopts a presumptive rule of majority representation.

[6] The Georgia Code contains the following provision dealing with the identity of a religious corporation:

> "The majority of those who adhere to its organization and doctrines represent the church. The withdrawal by one part of a congregation from the original body, or uniting with another church or denomination, is a relinquishment of all rights in the church abandoned." Ga. Code § 22-5504.

The trial court noted that the defendants (respondents here) did not claim any right of possession of the Vineville church property under this section. Pet. for Cert. App. 6a. The Georgia Supreme Court did not mention the provision.

ated with the PCUS. Such a determination, however, would appear to require a civil court to pass on questions of religious doctrine,[7] and to usurp the function of the commission appointed by the Presbytery, which already has determined that petitioners represent the "true congregation" of the Vineville church. Therefore, if Georgia law provides that the identity of the Vineville church is to be determined according to the "laws and regulations" of the PCUS, then the First Amendment requires that the Georgia courts give deference to the presbyterial commission's determination of that church's identity.[8]

This Court, of course, does not declare what the law of Georgia is. Since the grounds for the decision that respondents represent the Vineville church remain unarticulated, the judgment of the Supreme Court of Georgia is vacated and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

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[7] Issues of church doctrine and polity pervade the provisions of the Book of Church Order dealing with the identity of the local congregation. The local church corporation consists of "all the communing members on the active roll" of the church. *Id.*, at § 6-2; app. 35. The "active roll," in turn, is composed "of those admitted to the Lord's Table who are active in the church's life and work." *Id.*, at § 8-7; app. 38. The Session is given the power "to suspend or exclude from the Lord's Supper those found delinquent, according to the Rules of Discipline." *Id.*, at § 15-6(2); app. 51. See *id.*, at § 111-2; app. 124. The Session is subject to "the review and control" of the Presbytery, *id.*, at § 14-15; app. 49, as a part of the Presbytery's general authority to "order whatever pertains to the spiritual welfare of the churches under its care." *Id.*, at § 16-7(19); app. 56.

[8] There is no suggestion in this case that the decision of the commission was the product of "fraud" or "collusion." See *Serbian Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 713 (1976). In the absence of such circumstances, "the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but most accept such decisions as binding on them, in their application to the religious issue of doctrine or polity before them." *Id.*, at 709.

SUPREME COURT OF THE UNITED STATES

No. 78-91

R. W. JONES, SR., ET AL.,
Petitioners,
v.
CHARLES T. WOLF, ET AL.

On Writ of Certiorari to the Supreme Court of Georgia

[July 2, 1979]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE WHITE join, dissenting.

This case presents again a dispute among church members over the control of a local church's property. Although the Court appears to accept established principles that I have thought would resolve this case, it superimposes on these principles a new structure of rules that will make the decision of these cases by civil courts more difficult. The new analysis also is more likely to invite intrusion into church polity forbidden by the First Amendment.

I

The Court begins by stating that "[t]his case involves a dispute over the ownership of church property," *ante*, at 1, suggesting that the concern is with legal or equitable ownership in the real property sense. But the ownership of the property of the Vineville church is not at

issue. The deeds place title in the Vineville Presbyterian Church, or in trustees of that church, and none of the parties has questioned the validity of those deeds. The question actually presented is which of the factions within the local congregation has the right to control the actions of the titleholder, and thereby to control the use of the property, as the Court later acknowledges. *Id.*, at 6.

Since 1871 disputes over control of church property usually have been resolved under principles established by *Watson* v. *Jones*, 13 Wall. 679 (1871). Under the new and complex, two-stage analysis approved today, a court instead first must apply newly defined "neutral principles of law" to determine whether property titled to the local church is held in trust for the general church organization with which the local church is affiliated. If it is, then the court will grant control of the property to the councils of the general church. If not, then control by the local congregation will be recognized. In the latter situation, if there is a schism in the local congregation, as in this case, the second stage of the new analysis becomes applicable. Again, the Court fragments the analysis into two substeps for the purpose of determining which of the factions should control the property.

As this new approach inevitably will increase the involvement of civil courts in church controversies, and as it departs from long-established precedents, I dissent.

A

The first stage in the "neutral principles of law" approach operates as a restrictive rule of evidence. A court is required to examine the deeds to the church property, the charter of the local church (if there is one), the book of order or discipline of the general church organization, and the state statutes governing the holding of

church property. The object of the inquiry, where the title to the property is in the local church, is "to determine whether there [is] any basis for a trust in favor of the general church." *Ante*, at 4-5. The court's investigation is to be "completely secular," "rel[ying] exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges." *Id.*, at 7. Thus, where religious documents such as church constitutions or books of order must be examined "for language of trust in favor of the general church," "a civil court must take special care to scrutinize the documents in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust." *Id.*, at 8. It follows that the civil courts using this analysis may consider the form of religious government adopted by the church members for the resolution of intrachurch disputes *only* if that polity has been stated, in express relation to church property, in the language of trust and property law.[1]

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[1] Despite the Court's assertion to the contrary, *ante*, at 7, this "neutral principles" approach was not approved by the Court in *Maryland & Va. Eldership* v. *Sharpsburg Church*, 254 Md. 162, 254 A. 162 (1969), appeal dismissed, 396 U.S. 367 (1970). The state court there examined the constitution of the general church, the charters of the local churches, the deeds to the property at issue, and the relevant state statutes. But it did not restrict its inquiry to a search for statements expressed in the language of trust and property law; see 254 Md., at 169-176, 254 A.2d at 168-170 (1969). Rather, the state court canvassed all of these sources, and others, see 249 Md. 650, 665-668, 241 A.2d 691, 700-701 (1968), for information about the basic polity of the Church of God. Having concluded that the local congregations retained final authority over their property, it awarded judgment accordingly. Contrary to the statement of the Court in the present case that such an inquiry into church polity requires analysis of "ecclesiastical . . . doctrine," *ante*, at 10, "the Maryland court's resolution of the dispute involved no inquiry into religious doctrine." 396 U.S. at 368.

In *Presbyterian Church* v. *Hull Church*, 393 U.S. 440 (1969), "neutral principles" were referred to in passing, but were never

One effect of the Court's evidentiary rule is to deny to the courts relevant evidence as to the religious polity —that is, the form of governance—adopted by the church members. The constitutional documents of churches tend to be drawn in terms of religious precepts. Attempting to read them "in purely secular terms" is more likely to promote confusion than understanding. Moreover, whenever religious polity has not been expressed in specific statements referring to the property of a church, there will be no evidence of that polity cognizable under the neutral-principles rule. Lacking such evidence, presumably a court will impose some rule of church government derived from state law. In the present case, for example, the general and unqualified authority of the Presbytery over the actions of the Vineville church had not been expressed in secular terms of control of its property. As a consequence, the Georgia courts could find no acceptable evidence of this authoritative relationship, and they imposed instead a congregational form of government determined from state law.

This limiting of the evidence relative to religious government cannot be justified on the ground that it "free[s] civil courts completely from entanglement in questions of religious doctrine, policy, and practice." *Ante*, at 7. For unless the body identified as authoritative under state law resolves the underlying dispute in accord with the decision of the church's own authority, the state court effectively will have reversed the decisions of doctrine and practice made in accordance with church law. The

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described. *Id.*, at 449. What the Court refers to as an "approving reference" to "neutral principles" in *Serbian Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696 (1976), was only an acknowledgement in a footnote that "[n]o claim is made that the 'formal title' doctrine by which church property disputes may be decided in civil courts is to be applied in this case." *Id.*, at 723 n.15. Nor can the Court find support for its position in *Watson* v. *Jones*, 13 Wall. 679, 724-729 (1871).

schism in the Vineville church, for example, resulted from disagreements among the church members over questions of doctrine and practice. App. 233. Under the Book of Church Order, these questions were resolved authoritatively by the higher church courts, which then gave control of the local church to the faction loyal to that resolution. The Georgia courts, as a matter of state law, granted control to the schismatic faction, and thereby effectively reversed the doctrinal decision of the church courts. This indirect interference by the civil courts with the resolution of religious disputes within the church is no less proscribed by the First Amendment than is the direct decision of questions of doctrine and practice.[2]

When civil courts step in to resolve intrachurch disputes over control of church property, they will either support or overturn the authoritative resolution of the dispute within the church itself. The new analysis, under the attractive banner of "neutral principles," actually

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[2] The neutral-principles approach appears to assume that the requirements of the Constitution will be satisfied if civil courts are forbidden to consider certain types of evidence. The First Amendment's Religion Clauses, however, are meant to protect churches and their members from civil law interference, not to protect the courts from having to decide difficult evidentiary questions. Thus, the evidentiary rules to be applied in cases involving intrachurch disputes over church property should be fashioned to avoid interference with the resolution of the dispute within the accepted church government. The neutral-principles approach consists instead of a rule of evidence that ensures that in some cases the courts will impose a form of church government and a doctrinal resolution at odds with that reached by the church's own authority.

The neutral-principles approach creates other difficulties. It imposes on the organization of churches additional legal requirements which in some cases might inhibit their formation by forcing the organizers to confront issues that otherwise might never arise. It also could precipitate church property disputes, for existing churches may deem it necessary, in light of today's decision, to revise their constitutional documents, charters, and deeds to include a specific statement of church polity in the language of property and trust law.

invites the civil courts to do the latter. The proper rule of decision, that I thought had been settled until today, requires a court to give effect in all cases to the decisions of the church government agreed upon by the members before the dispute arose.

B

The Court's basic neutral-principles approach, as a means of isolating decisions concerning church property from other decisions made within the church, relies on the concept of a trust of local church property in favor of the general church. Because of this central premise, the neutral-principles rule suffices to settle only disputes between the central councils of a church organization and a unanimous local congregation. Where, as here, the neutral-principles inquiry reveals no trust in favor of the general church, and the local congregation is split into factions, the basic question remains unresolved: which faction should have control of the local church?

The Court acknowledges that the church law of the Presbyterian Church in the United States (PCUS), of which the Vineville church is a part, provides for the authoritative resolution of this question by the Presbytery. *Ante*, at 12-13. Indeed, the Court indicates that Georgia, consistently with the First Amendment, may adopt the *Watson* v. *Jones* rule of adherence to the resolution of the dispute according to church law—a rule that would necessitate reversal of the judgment for the respondents. *Id.*, at 13. But instead of requiring the state courts to take this approach, the Court approves as well an alternative rule of state law: the Georgia courts are said to be free to "adopt[] a presumptive rule of majority representation, defeasible upon a showing that the identity of the local church is to be determined by some other means." *Id.*, at 11. This showing may be made by proving that the church has "provid[ed], in the corporate charter or the constitution of the general church, that the

identity of the local church is to be established in some other way." *Id.*, at 12.

On its face, this rebuttable presumption also requires reversal of the state court's judgment in favor of the schismatic faction. The polity of the PCUS commits to the Presbytery the resolution of the dispute within the local church. Having shown this structure of church government for the determination of the identity of the local congregation, the petitioners have rebutted any presumption that this question has been left to a majority vote of the local congregation.

The Court nevertheless declines to order reversal. Rather than decide the case here in accordance with established First Amendment principles, the Court leaves open the possibility that the state courts might adopt some restrictive evidentiary rule that would render the petitioners' evidence inadequate to overcome the presumption of majority control. *Id.*, at 12 n.5. But, aside from a passing reference to the use of the neutral-principles approach developed earlier in its opinion,[3] the Court affords no guidance as to the constitutional limitations on such an evidentiary rule; the state courts, it says, are free to adopt any rule that is constitutional.

> "Indeed, the state may adopt any method of overcoming the majoritarian presumption, so long as the

[3] *Id.*, at 12. Such a use would be an extension of this restrictive rule of evidence, and one likely to exacerbate further the interference with free religious exercise. See 3-5, *supra*. Not only will a local congregation of a general hierarchical church be treated as an independent congregational church *unless* the rules of church government have been expressed in specified documents with explicit reference to church property. In addition, all local congregations will be regarded as having a rule of majority control *unless* they have related their general voting rules explicitly to disputes about church property. As a consequence, the resolution of doctrinal disputes within the polity chosen by the church members often will be overturned by the civil courts, an interference with religious exercise that cannot be squared with the First Amendment.

use of that method does not impair free exercise rights or entangle the civil courts in matters of religious controversy." *Id.*, at 12.

In essence, the Court's instructions on remand therefore allow the state courts the choice of following the long-settled rule of *Watson* v. *Jones* or of adopting some other rule—unspecified by the Court—that the state courts view as consistent with the First Amendment. Not only questions of state law but also important issues of federal constitutional law thus are left to the state courts for their decision, and if they depart from *Watson* v. *Jones*, they will travel a course left totally uncharted by this Court.

II

Disputes among church members over the control of church property arise almost invariably out of disagreements regarding doctrine and practice. Because of the religious nature of these disputes, civil courts should decide them according to principles that do not interfere with the free exercise of religion in accordance with church polity and doctrine. *Serbian Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 709, 720 (1976); *Presbyterian Church* v. *Hull Church*, 393 U.S. 440, 445-446, 449 (1969); *Kedroff* v. *Saint Nicholas Cathedral*, 344 U.S. 94, 107 (1952); *id.*, at 121-122 (Frankfurter, J., concurring). See also *Kreshik* v. *Saint Nicholas Cathedral*, 363 U.S. 190 (1960); *Maryland & Va. Eldership* v. *Sharpsburg Church*, 254 Md. 162, 254 A. 2d 162 (1969), appeal dismissed for want of a substantial federal question, 396 U.S. 367 (1970). The only course that achieves this constitutional requirement is acceptance by civil courts of the decisions reached within the polity chosen by the church members themselves. The classic

statement of this view is found in *Watson* v. *Jones*, 13 Wall. 679, 728-729 (1871):[4]

> "The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith, within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."

Accordingly, in each case involving an intrachurch dispute—including disputes over church property—the civil court must focus directly on ascertaining, and then following, the decision made within the structure of church governance. By doing so, the court avoids two equally unacceptable departures from the genuine neutrality man-

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[4] *Watson* v. *Jones* was decided at a time when the First Amendment was not considered to be applicable to the States through the Fourteenth Amendment, and before *Erie R. Co.* v. *Tompkins*, 304 U.S. 64 (1938), made state law applicable in diversity cases. But beginning with *Kedroff* v. *Saint Nicholas Cathedral*, 344 U.S. 94, 116 (1952), this Court has indicated repeatedly that the principles of general federal law announced in *Watson* v. *Jones* are now regarded as rooted in the First Amendment, and are applicable to the States through the Fourteenth Amendment. *Presbyterian Church* v. *Hull Church*, 393 U.S. 440, 447-448 (1969); *Serbian Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 710-711 (1976).

dated by the First Amendment. First, it refrains from direct review and revision of decisions of the church on matters of religious doctrine and practice that underlie the church's determination of intrachurch controversies, including those that relate to control of church property.[5] Equally important, by recognizing the authoritative resolution reached within the religious association, the civil court avoids interfering indirectly with the religious governance of those who have formed the association and submitted themselves to its authority. See pp. 3-5, *supra*; *Watson* v. *Jones*, *supra*, at 728-729; *Kedroff* v. *Saint Nicholas Cathedral*, *supra*, at 107-110.

III

Until today, and under the foregoing authorities, the first question presented in a case involving an intrachurch dispute over church property was where within the religious association the rules of polity, accepted by its members before the schism, had placed ultimate authority over the use of the church property.[6] The courts, in answering this question have recognized two broad categories of church government. One is congregational, in which authority over questions of church doctrine, practice, and administration rests entirely in the local con-

[5] Thus, in *Presbyterian Church* v. *Hull Church*, *supra*, the Court forbade the use of the "English approach" in the resolution of church property disputes because it requires the civil courts to determine whether authoritative decisions of doctrine and practice are consistent with the longstanding tenets of faith of a particular church. 393 U.S. at 449-450; accord, *Watson* v. *Jones*, *supra*, at 727-729. Similarly, in *Serbian Orthodox Diocese* v. *Milivojevich*, *supra*, the control of church property turned on the resolution of questions of doctrine and practice, "which under our cases is [only] for ecclesiastical and not civil tribunals." 426 U.S. at 709; see *id.*, at 720.

[6] After answering this question, of course, the civil court must determine whether the dispute has been resolved within that structure of government and, if so, what decision has been made.

gregation or some body within it. In disputes over the control and use of the property of such a church, the civil courts enforce the authoritative resolution of the controversy within the local church itself. *Watson* v. *Jones*, *supra*, at 724-726. The second is hierarchical, in which the local church is but an integral and subordinate part of a larger church and is under the authority of the general church. Since the decisions of the local congregation are subject to review by the tribunals of the church hierarchy, this Court has held that the civil courts must give effect to the duly made decisions of the highest body within the hierarchy that has considered the dispute. As we stated in *Serbian Orthodox Diocese* v. *Milivojevich*,

> "[T]he First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution *requires* that civil courts accept their decisions as binding upon them." 426 U.S., at 724-725 (emphasis added).[7]

A careful examination of the constitutions of the general and local church, as well as other relevant documents, may be necessary to ascertain the form of governance adopted by the members of the religious association. But there is no reason to restrict the courts to statements of polity related directly to church property. For the constitutionally necessary limitations are imposed not on the evidence to be considered but instead on the object of the inquiry, which is both limited and clear: the civil court must determine whether the local

[7] Accord, *Kedroff* v. *Saint Nicholas Cathedral*, *supra*, at 113-114; *Watson* v. *Jones*, *supra*, at 727.

church remains autonomous, so that its members have unreviewable authority to withdraw it (and its property) from the general church, or whether the local church is inseparably integrated into and subordinate to the general church.[8]

IV

The principles developed in prior decisions thus afford clear guidance in the case before us. The Vineville church is presbyterian, a part of the PCUS. The presbyterian form of church government, adopted by the PCUS, is "a hierarchical structure of tribunals which consists of, in ascending order (1) the Church Session, composed of the leaders of the local church; (2) the Presbytery, composed of several churches in a geographical area; (3) the Synod, generally composed of all Presbyteries within a State; and (4) the General Assembly, the highest governing body." *Presbyterian Church* v. *Hull Church*, *supra*, at 442. The Book of Church Order subjects the Session to "review and control" by the Presbytery in all matters, even authorizing the Presbytery to replace the leadership of the local congregation, to winnow its membership, and to take control of it. No provision of the Book of Church Order gives the Session the authority to withdraw the local church from the PCUS; similarly, no

[8] See Kauper, Church Autonomy and the First Amendment: the Presbyterian Church Case, in Church and State: The Supreme Court and the First Amendment 90-92, 97-98 (P. Kurland, ed. 1975). The Court suggests that the careful consideration of church constitutions and other relevant documents as a prerequisite to deciding basic questions of church polity may be impermissible if it requires a "searching . . . inquiry into church polity." *Ante*, at 9, quoting *Serbian Orthodox Diocese* v. *Milivojevich*, *supra*, at 723. The issue in *Serbian Orthodox Diocese*, however, was quite different. There, the hierarchical polity of the church was clear. *Id.*, at 715-717. What the Court held impermissible was the state court's further inquiry into the faithfulness of the church hierarchy's decisions to the detailed provisions of church law. *Id.*, at 712-713, 718, 721-723; *id.*, at 725 (WHITE, J. concurring).

section exempts such a decision by the local church from review by the Presbytery.

Thus, while many matters, including the management of the church property, are committed in the first instance to the Session and congregation of the local church, their actions are subject to review by the Presbytery. Here, the Presbytery exercised its authority over the local church, removing the dissidents from church office, asserting direct control over the government of the church, and recognizing the petitioners as the legitimate congregation and Session of the church. It is undisputed that under the established government of the Presbyterian church—accepted by the members of the church before the schism—the use and control of the church property have been determined authoritatively to be in the petitioners. Accordingly, under the principles I have thought were settled, there is no occasion for the further examination of the law of Georgia that the Court directs. On remand, the Georgia courts should be directed to enter judgment for the petitioners.

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IN THE SUPREME COURT OF GEORGIA

33126

JONES et al.

v.

WOLF et al.

Decided: Sep 27 1979

NICHOLS, Chief Justice.

1. The decision of this court in *Jones* v. *Wolf*, 241 Ga. 208 (243 SE2d 860) (1978), has been vacated, and the case has been remanded to this court for further proceedings. *Jones* v. *Wolf*, —— U.S. —— (—— S. Ct. ——, —— LE2d ——), 47 L.W. 4962 (1979).

2. Georgia has adopted for use in church local schism cases a "presumptive rule of majority representation, defeasible upon a showing that the identity of the local church is to be determined by some other means." *Jones* v. *Wolf*, *supra*, 47 L.W. at 4965. That presumption is overcome under Georgia law by an application of what has come to be known as "neutral principles" of law—that is, "state statutes, corporate charters, relevant deeds, and the organizational constitutions of the denomination." *Crumbley* v. *Solomon*, 243 Ga. 343 (—— SE2d ——) (1979). In deciding these cases, this court has sought to avoid resolving church property disputes on the basis of religious doctrine and practice. *Serbian Eastern Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 710 (96 S. Ct. 2372, 49 LEd2d 151) (1976). Accepting the dictates of a church court that decided which faction had

the right of use and enjoyment of church property, based upon church court resolution of matters of religious doctrine or faith, was perceived by this court as being contrary to the spirit of controlling law. *Maryland and Virginia Eldership of the Church of God* v. *Church of God at Sharpsburg*, 396 U.S. 367, 368 (90 S. Ct. 499, 24 LEd2d 582) (1970); *Jones* v. *Wolf*, *supra*. Now clearly given the choice to opt for either rule, this court chooses to adopt the rebuttable presumption of majority rule.

3. The parties apparently did not argue the applicability of Code Ann. § 22-5504 in their briefs filed in the Supreme Court of the United States. Appellees had stipulated in the trial court that this section applies only to churches having a congregational form of government. The Supreme Court of the United States has expressed concern about why this section was not discussed in the opinion of this court in *Jones* v. *Wolf*, *supra*. *Jones* v. *Wolf*, 47 L.W. at 4965. The existence of that stipulation is the reason. Code Ann. § 22-5504, like its predecessor, Code Ann. § 22-406, properly is to be construed as being applicable only to churches having a congregational form of government. See, *Sapp* v. *Callaway*, 208 Ga. 805 (69 SE2d 734) (1952).

In applying Code Ann. §§ 22-5507 and 5508 to the present litigation, this court is not concerned with the procedure by which factions within the local church and the national church decide which persons are "true believers" or "adherents to the true faith". Rather, church documents will be considered only insofar as they determine or assist in the determination of the persons who are "entitled to possess and enjoy the property located at 2193 Vineville Avenue in Macon, Ga." *Jones* v. *Wolf*, 47 L.W. 4962, at 4963. Stated otherwise, the only question for the courts is "which of the factions within the

local congregation has the right to control the actions of the titleholder, and thereby to control the use of the property . . . ." *Jones* v. *Wolf*, *supra* at 4966. The church documents in the present case speak to resolution of doctrinal disputes. They are silent as to which persons have the right to enjoy and to use the church property in the event of a schism at the local level.

5. [*sic*] After our decision in *Jones* v. *Wolf*, 241 Ga. 208 (243 SE2d 860) (1978), this court applied the "neutral principles doctrine" in a case in which two local church factions were aligned against each other in litigation while the national church chose to align itself with the one local group against the other. *Crumbley* v. *Solomon*, *supra*. The Supreme Court of the United States has permitted Georgia to apply the principle of presumptive majority rule to local schism cases, provided only that this court shall articulate the method by which this presumption may be overcome. *Jones* v. *Wolf*, 47 L.W. at 4965. The presumption may be overcome by reliance upon neutral statutes, corporate charters, relevant deeds, and the organizational constitutions of the denomination. *Crumbley* v. *Solomon*, *supra* at 343. A review of those sources discloses no provision that would rebut the Georgia presumption of majority rule as to the right to control the actions of the titleholder—that is, as to the right to possess, enjoy and control the use of these church premises. This silence distinguishes the present case from *Crumbley* v. *Solomon*, *supra*.

6. The judgment of the trial court is affirmed for the reasons stated in this opinion.

Judgment affirmed. All the Justices concur except Undercofler, P.J., and Jordan, Hill and Bowles, J.J., who concur in the judgment only, and Marshall, J., who dissents.

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-987

R. W. JONES, SR., et al.,
Petitioners,

vs.

CHARLES T. WOLF, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-987

R. W. JONES, SR., et al.,
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CHARLES T. WOLF, et al.,
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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of this Court is reported at ..... U.S. ....., 61 L.Ed. 2d 775, 99 S.Ct. 3020 (1979) and is reprinted in the Appendix to the Petition for a Writ of Certiorari at 23a-49a. The opinion of the Supreme Court

of Georgia from which this writ is taken is reported at 244 Ga. 388, 260 S.E.2d 84 (1979) and is reprinted at 50a-52a. The previous opinion of the Supreme Court of Georgia is reported at 241 Ga. 208, 243 S.E.2d 860 (1978) and is reprinted at 11a-16a. The unreported opinion of the Superior Court of Bibb County, Georgia is reprinted at 1a-10a.

JURISDICTION

The Supreme Court of Georgia entered judgment in this action on September 27, 1979 and petitioners failed to file a motion for a rehearing. Jurisdiction rests on 28 U.S.C. §1257(3).

QUESTION PRESENTED

Whether the Supreme Court of Georgia has adopted a presumptive rule of majority representation which can be overcome under the neutral principles approach, in accordance with the mandate of this Court.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONST., Amend. I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof * * *.

U.S. CONST., Amend. XIV, Sec. 1:

> * * * nor shall any State deprive any person of life, liberty, or property, without due process of law * * *.

STATEMENT OF THE CASE

For a third time, petitioners seek this Court's review of a dispute concerning the use and control of real estate owned by Vineville Presbyterian Church [hereinafter VPC] in Macon, Georgia. In its prior consideration of this action, this Court rejected petitioners' sweeping contention that civil courts are always required to defer to the ruling of a tribunal of a hierarchical church in a controversy between two factions of a local church. Rather, this Court held that a state is constitutionally entitled to adopt a presumptive rule of majority representation, which can be overcome under a neutral principles of law analysis involving consideration of deeds, state statutes governing the holding of church property, the local church's charter, and the general church's constitution. These are the identical neutral principles previously adopted by the Supreme Court of Georgia in *Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322, *cert. denied*, 429 U.S. 868 (1976).

Although the Court expressly recognized that the PCUS *Book of Church Order* "failed to reveal any language of trust in favor of the general church", App. 28a, the Court expressed uncertainty over the method employed by the Georgia courts to determine which of two factions was entitled to the possession and control of the local church property. Accordingly, this Court remanded the action to the Georgia Supreme Court with instructions to articulate the basis of its decision. In this connection, this Court stated:

> "If in fact Georgia has adopted a presumptive rule of majority representation, defeasible upon a showing that the identity of the local church is to be

determined by some other means, we think this would be consistent with both the neutral principles analysis and the First Amendment. Majority rule is generally employed in the governance of religious societies. See *Bouldin v. Alexander,* 15 Wall. 131 (1872). Furthermore, the majority faction generally can be identified without resolving any question of religious doctrine or polity. . . ." App. 349.

Responding to the mandate of this Court, the Supreme Court of Georgia expressly held that:

"Georgia has adopted for use in church local schism cases a 'presumptive rule of majority representation, defeasible upon a showing that the identity of the local church is to be determined by some other means.' *Jones v. Wolf, supra,* 47 L.W. at 4965. That presumption is overcome under Georgia law by an application of what has come to be known as 'neutral principles' of law—that is 'state statutes, corporate charters, relevant deeds, and the organizational constitutions of the denominations.'" *Id.* at 50a.[1]

1. Petitioners argue at page 10 of their brief that this holding was erroneous and in defiance of the mandate of this Court because different principles apply when the dispute is between two local factions rather than the parent church and a local congregation. Nothing could be further from the case. In Part IV of its opinion dealing with disputes in a divided congregation this Court specifically held that the same neutral principles are involved: "Most importantly, any rule of majority representation can always be overcome, under the neutral principles approach, either by providing, in the corporate charter or the constitution of the general church, that the identity of the local church is to be established in some other way, or by providing that the church property be held in trust for the general church and those who remain loyal to it." App. 34a.

The Georgia Supreme Court reviewed *Ga. Code Ann.* §§22-5504,[2] 22-5507,[3] and 22-5508,[4] because this Court had expressed uncertainty as to whether these provisions involved impermissible considerations of religious doctrine and polity. The Georgia Supreme Court expressly held that §22-5504 is applicable only to churches having a congregational form of government and thus was inapplicable to the instant case. With respect to §§22-5507 and 22-5508, the Court stated:

2. 22-5504 Majority represent church Withdrawal by part of congregation

The majority of those who adhere to its organization and doctrines represent the church. The withdrawal by one part of a congregation from the original body, or uniting with another church or denomination, is a relinquishment of all rights in the church abandoned.

(Acts 1968, pp. 565, 822)

3. 22-5507 Conveyances to churches or religious societies confirmed

All deeds of conveyance heretofore made, and which may hereafter be made, to any person or persons, for any lots of land within this State, to any church or religious society, or to trustees for the use of such church or religious society, for the purpose of erecting churches or meeting houses, are, and shall be deemed and taken to be, good and valid, and available in law for the intents, uses, and purposes contained in said deeds of conveyance; and all lots of land so conveyed shall be fully and absolutely vested in such church or religious society, or in their respective trustees, for the uses and purposes in said deed expressed; to be holden to them, or their trustees, for their use by succession, according to the mode of church government or rules of discipline exercised by such churches or religious societies respectively.

(Acts 1968, pp. 565, 822)

4. 22-5508 Trustees in conveyances, to what authority subject

All trustees to whom conveyances are or shall be made, for the purposes expressed in the preceding section, shall be subject to the authority of the church or religious society for which they hold the same in trust, and may be expelled from said trust by such church or society, according to the form of government or rules of discipline by which they may be governed.

(Acts 1968, pp. 565, 823)

"In applying Code Ann. §§22-5507 and 5508 to the present litigation, this court is not concerned with the procedure by which factions within the local church and the national church decide which persons are 'true believers' or 'adherents to the true faith'. Rather, church documents will be considered only insofar as they determine or assist in the determination of the persons who are 'entitled to possess and enjoy the property located at 2193 Vineville Avenue in Macon, Ga.' *Jones v. Wolf*, 47 L.W. 4962, at 4963. Stated otherwise, the only question for the courts is 'which of the factions within the local congregation has the right to control the actions of the titleholder, and thereby to control the use of the property. . . .' *Jones v. Wolf, supra* at 4966. The church documents in the present case speak to resolution of doctrinal disputes. They are silent as to which persons have the right to enjoy and to use the property in the event of a schism at the local level." *Id.* at 51a-52a.[5]

The Supreme Court of Georgia affirmed the decision of the trial court and entered judgment on September 27, 1979. Petitioners failed to file a motion for a rehearing pursuant to Rule 47[6] of the Rules of the Supreme Court of Georgia.

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5. This ruling is likewise in complete accord with the opinion of this Court: "In undertaking such an examination [of church constitutions], a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust." App. 30a.

6. "Motions for rehearing shall be filed within 10 days from the date of decision. A copy of the opinion shall be attached."

REASONS FOR DENYING THE WRIT

I. Consistent With the Mandate of This Court, the Georgia Supreme Court Validly Adopted a Presumptive Rule of Majority Representation Which Is Defeasible Upon a Showing That the Identity of the Local Church Is to Be Established by Other Means

The Georgia Supreme Court has clearly and unequivocally adopted a presumptive rule of majority representation for use in disputes between factions of a local church. The Court further held that the presumption may be overcome under Georgia law by the application of neutral principles - i.e. state statutes, corporate charters, relevant deeds, and the organizational constitution of the denomination. Thus, the Georgia Supreme Court clearly complied with the mandate of this Court to articulate the basis of its prior decision.

Contrary to petitioners' assertions, Georgia courts have long recognized a presumption of majority representation in all church property disputes. The Georgia courts have recognized two types of church government—congregational and hierarchical. As the Supreme Court noted in *Crumbley v. Solomon*, 243 Ga. 343, 254 S.E.2d 330 (1979):

> "If the church government is congregational, then a majority of its members control its decisions and local church property. If hierarchical, then we use 'neutral principles of law' to determine whether the local church or parent church has the right to control local property. Those 'neutral principles' are state statutes, corporate charters, relevant deeds, and the organizational constitutions of the denomination." 243 Ga. at 343.

Under Georgia law, both forms of church government employ majority rule in the absence of an express indication to the contrary. With respect to congregational churches, the concept of majority representation is embodied in *Ga. Code Ann.* §22-5504. Notwithstanding petitioners' protestations to the contrary, the Georgia Supreme Court expressly held that §22-5504 pertains only to churches having a congregational form of government and thus was inapplicable to the instant case. This definitive interpretation of Georgia law is controlling and is not cognizable in a petition for a writ of certiorari. Petitioners' assertions that §22-5504 is applicable to the instant case and effects a violation of the First Amendment is without merit.

With respect to hierarchical churches such as PCUS, Georgia has adopted a presumption of majority representation which is defeasible if a neutral principles of law analysis indicates otherwise. A denomination may employ reversionary clauses, trust provisions, constitutional provisions, or similar techniques to lodge ultimate control over the use and possession of local church property in the denomination or its designee. This Court expressly sanctioned such measures for ensuring that a dispute over the ownership of local church property will be resolved in accordance with the desires of the general church. App. at 30a.

In the instant case, the Georgia courts examined the applicable deeds, the VPC charter, Georgia statutes and the PCUS *Book of Church Order*. As this Court noted, the PCUS *Book of Church Order* "failed to reveal any language of trust in favor of the general church." *Id.* at 28a. Likewise, the Georgia courts concluded that neither PCUS nor the local congregation employed a trust clause or any other technique to establish ultimate control in

the so-called loyal faction of the local congregation so as to constitute a defeasance of the presumption of local church majority rule. Finding no basis to overcome presumption of majority representation and that the trial court had properly applied the neutral principles approach of *Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322, *cert. denied*, 429 U.S. 868 (1976), the Georgia Supreme Court held that petitioners were not entitled to the relief requested.

Georgia law prescribes the methods whereby a minority faction in a local church property dispute may overcome the presumptive rule of majority representation. In *Crumbley v. Solomon, supra,* which was decided after the initial Georgia Supreme Court opinion in this case, the minority faction of a local hierarchical church was able to overcome the presumption of majority rule. Upon a review of state statutes, relevant deeds, corporate charters, and the organizational constitution of the denomination, the Georgia Supreme Court found that there was a clause for the benefit of the general church in its discipline which provided that "the Association shall hold all property, regardless if all members vote to change the church to some other faith." 243 Ga. at 345, 254 S.E.2d at 332.

Unlike the general church involved in *Crumbley,* PCUS in the instant case failed to adopt any measures to ensure control over local church property either directly or by recognizing a local faction as being entitled to possession. To the contrary, the PCUS *Book of Church Order* provides that the trustees of a local church shall hold, sell, mortgage, and otherwise deal with church property *solely* at the direction of the local church congregation. J.A. 35. PCUS thus has a policy of local control which can be ascertained from its constitution under the neutral principles analysis without engaging in a searching and impermissible inquiry into church polity.

Accordingly, the Georgia Supreme Court properly adopted a presumptive rule of majority representation which is fully consistent with the mandate of this Court.

II. The Opinion of the Supreme Court of Georgia Is a Definitive Statement of the Law of Georgia and Conclusively Binds the Parties

The Georgia Supreme Court opinion that is attacked by the petition was a definitive statement of Georgia law. With only one dissent, it was held that Georgia has adopted a presumptive rule of majority representation which may be overcome by the application of "neutral principles" of law.

Petitioners make the hypertechnical assertion that the opinion of the Georgia Supreme Court was "no ruling at all." This contention is unsound and constitutes no justification for the grant of certiorari.

The expression "no ruling at all" is taken from *Grantham Transfer Co., Inc. v. Hawes,* 225 Ga. 436, 169 S.E.2d 290 (1969). In referring to an earlier opinion of the Court of Appeals of Georgia affirming the denial of a motion for summary judgment in the same case,[7] it was stated:

> "But since that judgment was affirmed in *Undercofler v. Grantham* . . . in which only three of the five concurring judges held that there was an issue of fact, it might be said that such a statement in that opinion gives the grounds upon which this part of the judgment was based and it thereby became the law of the case to the effect that an issue of fact is made by this record which is, in substance, the same

7. *Undercofler v. Grantham,* 114 Ga. App. 868, 152 S.E.2d 900 (1966).

> as that there considered. This cannot be true, as only five of the nine judges in that court concurred in the judgment of affirmance with two of these concurring in the judgment only. Four dissented. This renders the entire opinion not a ruling by the court but merely the view of only three judges, which is no ruling at all, and hence it cannot constitute the law of the case. See *Southern R. Co. v. Parker,* 194 Ga. 94, 102 (21 S.E.2d 94); *Smith v. State,* 196 Ga. 595, 602 (27 S.E.2d 369); and *McCurry v. McCurry,* 233 Ga. 334 (155 S.E.2d 378), which hold that minority opinions are not binding, although the judgments were concurred in by a majority of the court. We therefore put those judgments aside as having no relevancy to the issues in this case." 225 Ga. at 439, 169 S.E.2d at 293.

None of the cases cited in the above quotation dealt with the effect on the "law of the case" of prior opinions which contained concurrences in the judgment only. Instead, all three discussed the non-binding effect of such opinions in light of the former Georgia "full bench rule." This rule resulted from an 1896 Act of the Georgia General Assembly and is codified in *Ga. Code Ann.* §6-1611, which read in pertinent part as follows:

> "Unanimous decisions rendered . . . by a full bench of six shall not be overruled or materially modified except with the concurrence of six Justices, and then after argument had, in which the decision, by permission of the court, is expressly questioned and reviewed; and after such argument the court in its decision shall state distinctly whether it affirms, reverses, or changes such decision."

The "full bench rule" has now been discarded by the Georgia Supreme Court. Because of the adoption of

a new Georgia Constitution in 1945, it was relegated to being a mere "policy" in *Ward v. Big Apple Super Markets of Bolton Road, Inc.*, 223 Ga. 756, 158 S.E.2d 396 (1967); and in *Hall v. Hopper*, 234 Ga. 625, 216 S.E.2d 839 (1975) the Court declared that the rule had been repealed.

The decision of the Georgia Supreme Court represents a *holding* by all but one member of the Court that Georgia has adopted a presumptive rule of majority representation and that the presumption may be overcome by the application of neutral principles of law. The fact that four of the six justices concurred in the judgment only does not detract in the slightest from this holding. The judgment of the Supreme Court of Georgia was rendered in direct response to this Court's mandate. It was a complete and final resolution of the controversy under Georgia law, and it is binding upon the parties.

Petitioners failed to file a motion for rehearing in the Supreme Court of Georgia although they had the right to do so. They could have contended that the holding was "no ruling at all" and requested a clarification from the Supreme Court of Georgia, but they did not do so. They could have contended in a motion for rehearing that the Georgia Supreme Court had failed to comply with the mandate of this Court, but they did not do so. Their argument that the Supreme Court of Georgia's decision "flouts" the mandate is specious, is a totally unjustified slur, and should be rejected.

III. The Neutral Principles Approach Applied in This Case Does Not Establish Religion, Interfere With Its Free Exercise or Deny Equal Protection

Petitioners' contention that the decision of the Georgia Supreme Court violates the free exercise and establishment clauses as well as the equal protection clause is

without merit. While the holding of the Georgia court will require some changes at either the local or denominational level in order to reach a contrary result in future cases arising in Georgia, there is absolutely no basis for their argument that the presbyterian form of government is placed in jeopardy or that persons are being forced to adopt views they deem to be abhorrent.[8]

The largest presbyterian denomination in the United States is the United Presbyterian Church in the United States of America (UPCUSA). Its *Book of Order* has long contained provisions which are sufficient under the neutral principles approach to place ultimate authority over local property in the denomination. For example, Section 62.08[9] states that local trustees can deal with the property of a local church only as directed by the *session* instead of "solely under the instructions of the congregation which they serve", as PCUS provides. J.A. 35. Section 62.12[10] prohibits a local church from selling, mortgaging or encumbering its property without written per-

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8. It is indeed ironic that Petitioners are even advancing such an argument on behalf of PCUS. They have consistently noted throughout this litigation that only the local faction of the church to which they adhere (the minority) is a party to this litigation and that PCUS is not a party and is not seeking to take possession of the property of the local church. Brief for Petitioners, No. 78-91, p. 33.

9. "62.08 8. Whether by civil law the trustees of a particular church hold title to its property or are the officers of a corporation which holds title thereto, they shall deal with such property only as they may be authorized or directed by the session, and their authority in respect to the selling, mortgaging, and leasing of real property shall be subject also to any rights reserved to the congregation by civil law or the bylaws of the particular church and to the permission of presbytery as herein provided." J.A. 333.

10. "62.12 12. A particular church shall not sell, mortgage or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the particular church." J.A. 334.

mission from the presbytery. These provisions have been relied upon by courts in litigation involving that denomination to conclude that ultimate control over local church property resides in the denomination or its delegate. See *Lowe v. First Presbyterian Church of Forest Park*, 308 N.E.2d 801 (Ill. 1974).[11]

The fact that the UPCUSA has chosen to include these neutral, secular provisions in its constitution to ensure that it gets the result sought here by PCUS in nowise constitutes an abrogation of the presbyterian form of government. Were PCUS to adopt similar provisions,[12] the Georgia courts would undoubtedly find under *Crumbley* and this case that a neutral principle existed which has the effect of overcoming the presumption of majority representation.

Petitioners' argument about being denied equal protection is equally specious. *Ga. Code Ann.* §22-5504 applies only to local congregations in congregational denominations. App. 51a. The majority of the membership do in fact represent the church and control its property. Those who withdraw (the minority)[13] relinquish their rights

11. This case also followed the deference rule applied in *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871).

12. Since this controversy arose, PCUS has amended its *Book of Church Order* to provide that a local church can withdraw only by constitutional action on the part of a presbytery. J.A. 329. It has not adopted any specific provisions dealing with property similar to those cited in footnotes 9 and 10, *supra*.

13. "When a section of the Code has been codified from a decision of this Court, it will be construed in the light of the source from which it came, unless the language of the section imperatively demands a different construction." *Sinclair v. Friedlander*, 197 Ga. 797, 798, 30 S.E.2d 398, 399 (1944). *Ga. Code Ann.* §22-5504 was codified from the decision in *Bates v. Houston*, 66 Ga. 198 (1880). Those "persons who withdrew" were the minority faction of a congregational church that had left the old church organization and forceably taken possession of the church sanctuary.

in it. This is a perfectly reasonable and logical way for civil courts to deal with disputes in congregational churches. The fact that this Code Section does not apply to Petitioners clearly does not abridge equal protection.

CONCLUSION

The most recent decision of the Georgia Supreme Court in this litigation is in complete conformity with the opinion and mandate of this Court. There is no conflict with that decision or any other opinion of this Court and the writ should therefore be denied.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-987

R. W. JONES, SR., *et al.*,
Petitioners

v.

CHARLES T. WOLF, *et al.*,
Respondents

PETITIONERS' REPLY MEMORANDUM

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PETITIONERS' REPLY MEMORANDUM

The Brief for Respondents in Opposition ("Resp. Brief") makes several misleading or mistaken assertions to which a short reply is warranted:

1. Respondents argue that "Georgia courts have long recognized a presumption of majority representation in all church property disputes." Resp. Brief at 7. With regard to hierarchical churches, this statement simply is not true. Respondents have not cited and we have not found a single instance prior to the Georgia Supreme Court's decision on remand in this case in which the concept of a presumption of majority representation was even discussed in a hierarchical church case in Georgia.[1]

[1] *Crumbley* v. *Solomon*, 243 Ga. 343, 254 S.E.2d 330 (1979), is cited by respondents as a case in which "the minority faction of a local hierarchical church was able to overcome the presumption of majority rule." Resp. Brief at 9. In fact, the Supreme Court of Georgia in *Crumbley* found for the *general* church, whose trustees were a party and whose disciplinary rule provided that the general

This is particularly important because petitioners had been given no notice by prior Georgia cases that a majority of the congregation of the Vineville Presbyterian Church would be presumed to control their church's property. Nor could they have known how to rebut such a presumption. Indeed, based upon the decision below, they still do not know exactly how to provide for control by a faction loyal to the Presbyterian Church in the United States ("PCUS"), without in effect deeding all property to PCUS.

Respondents argue that "[u]nlike the general church involved in *Crumbley*, PCUS in the instant case failed to adopt any measures to ensure control over local church property either directly or by recognizing a local faction as being entitled to possession." Resp. Brief at 9. That, too, is incorrect. The PCUS *Book of Church Order* ("BCO") provides a procedure for the resolution of disputes and gives the General Assembly final authority to suppress schismatical contentions and disputations.[2] *See*

church "shall hold all church property, regardless if all members vote to change the church to some other faith." *Id.*, 254 S.E.2d at 333. The majority rule presumption is a technique for determining which faction is the true representative of a local congregation following a schism. The *Crumbley* opinion not only fails to mention any such presumption, but it specifically declines to "make the forbidden determination of which is the 'true' Franklin Tabernacle." *Id.* Respondents, like the Supreme Court of Georgia, seem unwilling to accept this Court's opinion that the instant case "contains a significant complicating factor" absent in cases in which the general church is a party. Appendix to the Petition for a Writ of Certiorari ("App.") at 33a.

[2] Respondents assert that the BCO provides for property to be dealt with by local trustees solely at the direction of the local church congregation. *See* Resp. Brief at 9. What respondents fail to mention is that the section of the BCO to which they refer also provides that the "powers and duties of such trustees must not infringe upon the powers or duties of the Session or of the Board of Deacons." JA 35. Among the powers and duties of the Session is the obligation "[t]o observe and carry out the lawful injunctions of the higher [church] courts." JA 52. Moreover, the BCO specifically provides that the Presbytery has power "[t]o review the records of Sessions, redress whatever they may have done contrary to order, and take effectual care that they observe the Constitution of the Church." JA 55.

Joint Appendix ("JA") at 55, 61. Moreover, prior to the schism in this case, the General Assembly of PCUS had interpreted the church constitution so as to leave no doubt as to the position of the denomination with respect to the ownership, use, and control of church property.[3] Nevertheless, the Georgia Supreme Court ignored petitioners' request that this case be remanded to the trial court for the taking of further evidence on this point so that petitioners would have an opportunity to rebut any presumption that PCUS is a "majority rule" church. *See* Petition for a Writ of Certiorari ("Cert. Petition") at 14-15. Thus, what this Court intended to be a *rebuttable* presumption has become in Georgia effectively irrebuttable.

In short, the Georgia Supreme Court's two-judge opinion announces a new rule of majority representation.

[3] An excerpt from the lengthy statement adopted by the 1971 General Assembly is illustrative:

> The beneficial ownership of the property of a particular church of the Presbyterian Church in the United States is in the congregation of such church and title may properly be held in any form, corporate or otherwise, consistent with the provisions of civil law in the jurisdiction in which such property is situated. The congregation, with respect to such property, may properly exercise any privilege of ownership possessed by property owners in such jurisdiction. *In every instance nothing in the manner of tenure of such property or the use thereof shall be in violation of the obligation of such congregation to the body of the Presbyterian Church in the United States as established by the Constitution of such Church.*
>
> * * *
>
> *A Presbyterian congregation, with its officers, pastor, elders and deacons, is a complete organization in itself, but it is not independent. (preface to the Form of Government, III, 1, 5.) It is a part of an extended whole, living under the same ecclesiastical constitution, and therefore subject to the inspection and control of the Presbytery, whose business is to see that the standards of doctrine and rules of discipline are adhered to by the particular churches under its care. It is the court of review and control, over all the sessions of the particular churches within its bounds. To the Presbytery are superadded the higher judicatories of Synods and General Assemblies, as the means of preserving the standards of doctrine and discipline on a more extended territorial scale.* [Emphasis added.]

While prospective application of such a rule might comport with the First Amendment if the "method of overcoming the majoritarian presumption * * * does not impair free exercise rights or entangle the civil courts in matters of religious controversy," App. 35a, we dispute respondents' contention that the rule announced in the Georgia Supreme Court's two-judge opinion is "fully consistent with the mandate of this Court." Resp. Brief at 10.

2. Respondents have incorrectly labeled as "hypertechnical"—but otherwise failed to rebut—petitioners' showing that the two-judge opinion below was "no ruling at all," and thus was in violation of this Courts' mandate. *See* Cert. Petition at 7; Resp. Brief at 10. Respondents attempt to show, by their analyses of Georgia law on "law of the case" and the "full bench rule," that we are mistaken in asserting that the opinion below represented the views of only the two (of seven) judges who neither dissented nor concurred in the judgment only. The most glaring hole in their argument is their total failure to reconcile the Rules of the Supreme Court of Georgia with their position. As we pointed out, Rule 58 of that court, adopted August 1, 1979, provides in part that "Justices concurring specially or in the judgment only do not agree with all that is said in the opinion." Cert. Petition at 7.

Respondents argue that all but the dissenting judge concurred in the *holding* that Georgia has adopted a rule of majority representation and that the presumption may be overcome by the application of neutral principles of law. Resp. Brief at 12. Petitioners must emphasize, however, that to concur in the judgment means only that one agrees with the outcome. The four judges who concurred in the judgment could have done so for any number of reasons while still disagreeing heartily with the majoritarian presumption language in the two-judge opinion.

This Court remanded this case for an authoritative articulation of Georgia law so that the application of that law in this case could be measured against the requirements of the Constitution. The Georgia Supreme Court has failed to comply with that mandate.

3. Respondents assert that the *Book of Order* of the United Presbyterian Church in the United States of America ("UPCUSA")—a church unrelated to PCUS—"has long contained provisions which are sufficient under the neutral principles approach to place ultimate authority over local property in the denomination." Resp. Brief at 13. Respondents suggest that if PCUS were to adopt similar provisions, the Georgia courts would "undoubtedly find under *Crumbley* and this case that a neutral principle existed which has the effect of overcoming the presumption of majority representation." *Id.* at 14.

Unfortunately for all members of hierarchical churches, the state of the law is far more unsettled than respondents' facile remedies would suggest.[4] In fact, the very provisions of the UPCUSA Constitution which respondents recommend to insure general church control over local

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[4] *See* Cert. Petition at 15 n.10. Petitioners have recently learned of two additional cases which discuss this Court's opinion in the instant case. The Court of Appeal of Louisiana, Third Circuit, read *Jones* v. *Wolf* as turning on "whether the deed or the corporate charter or constitution contain [sic] language of trust in favor of the general church." *Louisiana District Council of the Assemblies of God, Inc.* v. *Victory Temple Assembly of God*, No. 10006, slip op. at 9 n.1 (La. Ct. App., Sept. 20, 1979).

The Appellate Court of Illinois, meanwhile, found a suit to enjoin demolition of a church to be a question of church polity over which civil courts lack jurisdiction, citing *Jones* v. *Wolf* as reaffirming the restricted role of civil courts in religious property disputes. *Galich* v. *Catholic Bishop of Chicago*, 75 Ill.App.3d 538, 394 N.E.2d 572 (1979).

Moreover, we are advised that respondents in *Mills* v. *Baldwin*, 362 So. 2d 2 (Fla. 1978), *vacated and remanded*, 99 S.Ct. 3105, *aff'd on remand*, No. 51,588 (Fla. 1979), intend to file shortly with this Court a Petition for a Writ of Certiorari. *See* Cert. Petition at 15 n.10 for a discussion of that case.

property were held by a California Court of Appeal to be insufficient for that purpose. In *Presbytery of Riverside* v. *Community Church of Palm Springs*, the California court, in awarding church property to a withdrawing majority faction, purportedly applied a neutral principles analysis but found that "those provisions in The Book of Order that at first blush might be taken to support appellants' position (presbytery's permission required to sell, lease or encumber local church property; property to inure to the benefit of UPCUSA in the event of abandonment or dissolution of the local church) give rise to conflicting inferences, for if the property of a local church were in fact held in trust for the general church, those provisions would appear to be unnecessary." 89 Cal.App. 3d 910, 932, 152 Cal.Rptr. 854, 867-868 (1979), *cert. denied*, 48 U.S.L.W. 3354 (U.S. Nov. 26, 1979) (No. 79-558).

In a Brief Amicus Curiae in Support of the Petition for a Writ of Certiorari in the *Riverside* case, the Lutheran Church in America was joined by eight other hierarchical denominations in urging this Court to clarify the law "to avert the state of chaos which unclear understandings of the reach of *Jones* v. *Wolf* and its modification of the settled principles of *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679 (1871), and *Serbian Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696 (1976), have already threatened."

The rights of a significant number of church-going Americans are affected by the confusion which exists in this area of the law. This Court should grant a writ of certiorari here and provide much-needed guidance to the lower courts.

CONCLUSION

For the foregoing reasons, and for the reasons stated in their earlier Petition, petitioners respectfully urge the Court to grant a writ of certiorari, to reverse the decision below, and to remand the case to the Supreme Court of Georgia with appropriate instructions.

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BRIEF FOR AMICI CURIAE, THE PRESBYTERIAN CHURCH IN THE UNITED STATES, LUTHERAN CHURCH IN AMERICA, ORTHODOX CHURCH IN AMERICA, HUNGARIAN REFORMED CHURCH IN AMERICA, AND CUMBERLAND PRESBYTERIAN CHURCH IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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CHARLES T. WOLF, *et al.*,
Respondents.

BRIEF FOR AMICI CURIAE, THE PRESBYTERIAN CHURCH IN THE UNITED STATES, LUTHERAN CHURCH IN AMERICA, ORTHODOX CHURCH IN AMERICA, HUNGARIAN REFORMED CHURCH IN AMERICA, AND CUMBERLAND PRESBYTERIAN CHURCH IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

INTEREST OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES AND OTHER AMICI CURIAE

The Presbyterian Church in the United States (hereafter PCUS) is the religious denomination of which the Vineville Presbyterian Church (hereafter VPC) located in Macon, Georgia, was a local congregation, from the time of its organization by the Augusta-Macon Presbytery in 1904. The members now loyal to PCUS stand in the tradition and identify with all those members who have gone before and have been loyal to PCUS. On May 27, 1973, a majority of the then members of the local

congregation and its then pastor undertook to withdraw the local Church and control of its property from the Presbytery which had created the local Church and from the denomination of which it had been a part for sixty-nine years.

PCUS is a Protestant, Christian Church in the Calvin-Knox tradition. Its constitution consists of "its doctrinal symbols, embraced in the Confession of Faith and the Larger and Shorter Catechisms, together with the Book of Church Order (hereafter sometimes BCO), which comprises the form of government, the rules of discipline and the "Directory for Worship," [1] each of which has evolved from the English and Scottish documents adopted after the Protestant Reformation.

PCUS is one of approximately thirteen or more Presbyterian denominations in the United States having a common heritage and constitutions basically similar but not identical.

PCUS, according to 1979 statistics, is comprised of a General Assembly which meets annually, seven Synods, fifty-nine Presbyteries, and four thousand seven local congregations, located in sixteen states [2] and the District of Columbia. Two hundred ninety-one local churches are located in the State of Georgia. There were five thousand two hundred fifty-four ordained ministers and eight hundred sixty-two thousand four hundred sixteen communicants.

The position of PCUS and those members loyal to it is that dissident members of a local congregation may as individuals withdraw at will, but that a majority of the local members may not withdraw the local church and

[1] Form of Government, *BCO*—Preface II, App. 29.

[2] Alabama, Arkansas, Florida, Georgia, Kansas, Kentucky, Louisiana, Maryland, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia.

control of its property from the PCUS denomination except by the consent of the Presbytery which established the church. The power of Presbytery with respect to division, dismissal, and dissolution of churches is specific in BCO 16-7(6) (8) and (9) [App. 46]. The jurisdiction of higher courts to review lower courts is a historic characteristic of Presbyterianism.

It is important that the ultimate dispute in this case is over the use and control of Church property; that PCUS is a representative form of government, and by express provisions of BCO, the use and control of Church property is not in the members of the congregation but in the Church Session established by BCO as the governing body of the congregation; [3] that the Presbytery has the power "to assume, original jurisdiction in cases in which a church session cannot exercise its authority" (*BCO* 16-7(2), App. 55); and that in this case, the Presbytery had set aside the Church Session and was undertaking to control the use of the Church property as it had the right to do under the specific language of the *Book of Church Order*, to which all members had subscribed.

In the fifteen years [4] since the first Hull Church case which began early in 1966, there have been two trials, four hearings and decisions by the Supreme Court of Georgia, two hearings and multiple opinions by the United

[3] "The Church Session is charged with maintaining the spiritual government of the Church. For this purpose it has power: . . . . (10) to exercise in accordance with the Directory of Worship, authority over the time and place of the preaching of the Word, and of the administration of the Lord's Supper, over all other religious services, over the music in the services, and over the uses to which the church building and associated properties may be put. *BCO* 15-6 (10), App. 52.

[4] *Presbyterian Church* v. *Eastern Heights Presbyterian Church*, 224 Ga. 61, 159 S.E.2d 690 (1968), *rev'd.*, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969).

States Supreme Court. After all of these judicial attempts to apply neutral principles of law, said to be objective, well-established, and familiar to lawyers and judges, the most recent attempt (after five previous attempts) by the Supreme Court of Georgia was accepted by only two of the seven present members of the Supreme Court of Georgia.

A further review of the Georgia law with respect to the rights of a hierarchical church in the control of the use of the property of a local congregation, a majority of whose then members undertake to withdraw, is of the highest importance to PCUS and the members of the denomination. The uncertainty of the civil law of Georgia with respect to the control of the property of religious institutions is a present danger to the two hundred ninety-one local congregations of PCUS located in the State of Georgia and a threat to all of the four thousand seven local congregations of the denomination, to other Presbyterian denominations whose form of government is basically similar, and in fact to all religious institutions.

While PCUS is not a party to the litigation, it has under the circumstances a direct interest in the property of VPC. This brief will set forth the basis of that interest as PCUS believes is established by an objective neutral reading of the deeds, statutes and constitutional documents of PCUS.

The other Amici Curiae, Lutheran Church in America, Orthodox Church in America, the Hungarian Reformed Church in America, and Cumberland Presbyterian Church are also hierarchical churches similarly affected and concerned by the decision below.

This Amicus Brief is being filed with the consent of all the parties (letters on file with the Clerk of the Court).

SUMMARY OF CONTROLLING PROVISIONS OF BOOK OF CHURCH ORDER, PCUS

We believe it useful to state at the outset why the *Order* of PCUS does not allow members of a local congregation to separate a PCUS Church from PCUS.

(1) Presbytery organized VPC. VPC did not join PCUS. "Forty-eight citizens of Bibb County, Georgia, submitted a petition . . . to be organized into a Presbyterian Church." (App. 319) VPC was created by PCUS.

(2) In the proceeding in which VPC was organized, the members promised to "walk together as an organized church on the principles of faith and *Order* of the Presbyterian Church in the United States." (*BCO* 4-1(2) App. 24)

(3) Ministers, elders and deacons upon ordination are required to approve the government of PCUS. (*BCO* 27-6(4) App. 84; *BCO* 29-3(4) (App. 89)

(4) The *Order* of PCUS is a representative form of government. "It is expedient and agreeable to scripture and to the practice of early Christians that the Church be governed by representative assemblies, composed exclusively of Presbyters or elders." (*BCO* 13-1 App. 38)

(5) The *Order* of PCUS gives the Session the power of government. "Its government (the particular church) and jurisdiction, being a joint power, is lodged in the church session which consists of the pastor(s) and ruling elders."

(6) The session to which the government of a particular church is committed has authority over the time and place for preaching, over all religious services, and over the uses to which the church building and assorted properties may be put. (*BCO* 15-6 App. 51) The function of the congregation is limited to calling ministers (subject to approval of Presbytery), election of elders and deacons,

and permissibly, trustees and corporate officers, and instructing trustees and officers with respect to the purchase, sale and mortgaging of property of the Church, with the limitation that the duties of trustees and officers "must not infringe upon the powers and duties of the session or of the Board of Deacons." (*BCO* 6-1 & 2 App. 35)

(7) The *Order* of PCUS establishes a hierarchal form of government. "Although each court exercises exclusive original jurisdiction over all matters specially belonging to it, the lower courts are subject to the review and control of the higher courts, in regular gradation." (*BCO* 14-5 App. 49)

(8) The Presbytery, which exercises jurisdiction over churches within a prescribed district (BCO 14-5 App. 49) has power to review and redress whatever particular churches may have done contrary to *Order* and take effectual care that they observe the constitution of the Church, to assume original jurisdiction (that is, set aside the session and govern the particular church directly), to unite or divide churches, to receive and dismiss churches, to dissolve churches, and control the location of new churches and of churches desiring to move to new locations (BCO 16-7 App. 55), and to take title to property of churches which are dissolved or cease to exist. (BCO 6-3 App. 27)

(9) Church members who renounce the communion of PCUS by joining some other church are erased from the rolls (BCO 111-2 App. 124), and officers lose all authority. (BCO 111-3 App. 125)

We believe that these and other provisions of *BCO* show that a PCUS church can be separated from Presbytery and PCUS only by action of Presbytery. So far as we know, upon investigation, this is what every civil court which has considered the question under PCUS *Order* has held, except those in Georgia.

ARGUMENT

I

FIRST AMENDMENT RIGHTS HAVE BEEN LOST IN CONFUSION CREATED BY THE GEORGIA CASES.

The two-judge opinion below applies a "presumptive rule of majority representation" against Petitioners.[5] This rule is materially less favorable to PCUS than the non-presumptive rule apparently still applied by a majority of the court to hierarchical denominations in Georgia.[6] The law of Georgia is further confused by the Georgia Court's determination in the first *Jones* v. *Wolf* appeal that, "This case is distinguishable from *Carnes*, in which this Court found an *implied trust* in favor of the general church, the United Methodist Church, because its book of discipline provided that 'title to all real property now owned or hereafter acquired by an unincorporated local church, . . . shall be held by and/or conveyed to its duly elected trustees . . . and their successors in office, . . . in trust, nevertheless, for the use and benefit of such local church and The United Methodist Church.'" [Emphasis added.] *Jones* v. *Wolf*, 241 Ga. 208, 243 S.E.2d 860 (1978) (Pet. at 15a), *vacated and remanded*, ——

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[5] "Georgia has adopted for use in church local schism cases a 'presumptive rule of majority representation, defeasible upon a showing that the identity of the local church is to be determined by some other means.' [Authority omitted.] That presumption is overcome under Georgia law by an application of what has come to be known as 'neutral principles' of law—that is, 'state statutes, corporate charters, relevant deeds, and the organizational constitutions of the denomination.'" *Jones* v. *Wolf*, 260 S.E.2d 84 (Ga. 1979) (Pet. at 50a).

[6] "*Carnes* v. *Smith*, 236 Ga. 30, 222 S.E.2d 322 (1976), identified two types of church government—congregational and hierarchical. If the church government is congregational, then a majority of its members control its decisions and local church property. If hierarchical, then we use 'neutral principles of law' to determine whether

U.S. ——, 99 S.Ct. 3020 (1979). Notwithstanding that the implied trust theory was supposedly abandoned in *Presbyterian Church* v. *Eastern Heights Presbyterian Church*, 225 Ga. 259, 167 S.E.2d 658 (1969), we find the Supreme Court of Georgia still asserting in 1978 that it has life for *Carnes* but not *Jones*. As it has survived in *Crumbley*, the implied trust theory apparently has shed the forbidden departure-from-doctrine element which ostensibly caused the implied trust theory to be abandoned to the injury of PCUS in *Eastern Heights Presbyterian Church, supra.*

The departure-from-doctrine rule in Georgia formerly required "complete abandonment." *Presbyterian Church* v. *Eastern Heights Presbyterian Church*, 224 Ga. 61, 159 S.E.2d 690 (1968), *rev'd.*, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969). The Court in *Eastern Heights Presbyterian Church I*, *supra*, held, that, "We do not believe that 'complete' or like degree of abandonment or departure is necessary for relief. To the extent that *Mack* v. *Kime*, 129 Ga. 1, 58 S.E. 184, *supra*, requires such standard, it is expressly overruled." 159 S.E.2d at 696. The rule then adopted required merely "important" abandonment. These incongruous rulings of the Georgia Court have worked to the prejudice of PCUS under the First Amendment in Georgia.

To add to the confusion, Georgia Courts have spoken of the implied trust theory in a way not only inconsistent among the various Georgia cases but also inconsistent with the understanding of the meaning of implied trust

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the local church or parent church has the right to control local property.

". . . .

"In recent years this court has looked consistently to the requirements of the church discipline in hierarchical denominations to avoid offending the prohibitions of the First Amendment. For example, in *Carnes* v. *Smith*, this Court rested the general church's right to the property on the church discipline." *Crumbley* v. *Solomon*, 243 Ga. 343, 254 S.E.2d 330, 332-3 (1979).

well-established among lawyers and judges. The elementary distinction in Bogert, *Law of Trusts*, Ch. 2 § 8 (Hornbook 4th Ed.), suffices to illustrate this long understood meaning of implied trust: "But there are certain trusts which do not have back of them any written instrument or oral expression or other act explicitly showing a trust intent. These latter trusts are usually called implied, and are divided into two classes, namely, resulting and constructive. The former occur where the courts presume or infer from certain acts that the parties intended a trust to exist, *although they expressed no such intent directly by talking or writing* . . . The latter, namely, *constructive trusts*, are imposed by chancery on the owners of property as a means of accomplishing justice and preventing unjust enrichment." [Emphasis added.] Situations where title is conveyed to trustees, as in this case, are not situations for impressing an implied trust, either resulting or constructive, according to the well-established rules. *See* Restatement, Trusts, Ch. 12, General Principles (1935); Restatement, Restitution, § 160 (1937) ("an express trust and a constructive trust are not divisions of the same fundamental concept.") The confusion in the law has worked to the prejudice of PCUS' rights under the First Amendment.

As will be urged below, a fair reading of the stipulated documents in this case reveals as much interest of PCUS in controlling the property of VPC as in any of the cases which have found a controlling interest in favor of other denominations.

II

A "NEUTRAL PRINCIPLES" READING OF THE STIPULATED DOCUMENTS DISCLOSES THAT RESPONDENTS ARE NOT THE CHURCH NAMED IN THE DEEDS OF CONVEYANCE AND THAT THE PETITIONERS AND THOSE THEY REPRESENT ARE THE CHURCH AND ARE ENTITLED TO THE CONTROL OF THE CHURCH PROPERTY.

"The property at issue and upon which the church is located was acquired in three transactions, and is evidenced by conveyances to the 'Trustees of [or 'for'] Vineville Presbyterian Church and their successors in office,' App. 251, 253, or simply to the 'Vineville Presbyterian Church.' *Id.* at 249." *Jones* v. *Wolf*, 99 S.Ct. 3020, 3022. As noted in Petitioners' Brief,[7] "In a majority of these instruments, specific authorization was given to the trustees to deal with the property, but to do so 'by complying with the rules and regulations of the Church only.' JA 254, 257, 262, 265, 269." The "Church" as used in the trust expressed in the deeds is defined in Section 3-3 of the BCO: "Its government and jurisdiction, being a joint power, is lodged in the Church Session, which consists of the Pastor(s) and Ruling Elders." App. 32. The "rules and regulations" which the trustees are therefore bound to obey are the rules and regulations found in the BCO. The two-judge opinion below neither indicates what these regulations are nor whether the majority vote complied with them.

The government of the church whose rules and regulations the trustees of the deeds are thus expressly bound to obey is Session, which is a PCUS court and subject to the jurisdiction of PCUS higher courts. Under normal circumstances and in the absence of internal controversy and dispute, the Session controls the use of church property (BCO § 15-6[10] App. 52) and Presbytery supervision is by annual review of the Session minutes (BOC § 16-7[3] App. 55). Presbytery has no direct control of the use of church property. If Session is unable to exercise control, Presbytery may set the Session aside and assume direct jurisdiction (BCO § 16-7[2] App. 55) or dissolve the church and require the transfer of legal title to it (BCO § 6-3 App. 36). The interest which Presbytery has is analogous to a shifting use, unexecuted and dormant until the conditions (walk together as an organized church on the principles of faith and order of the Presbyterian Church in the United States—BCO § 4-1[2] App. 33) are broken and thereafter vesting in Presbytery the right to assume control and to take legal title to the property. In its discretion the Presbytery may dismiss the church and disestablish any relationship with PCUS. This flexible arrangement is the form of church government PCUS has chosen and prefers to the more rigid form of arrangement practiced by some other denominations.

[7] In Case No. 78-91, October Term 1978.

While it is clear that the "particular church" (as defined in the BCO, § 3-1, App. 32) was the primary beneficiary, there was a secondary use or shifting use provided in the BCO in favor of PCUS. The Trustees, whether expressly denominated Trustees under BCO Section 6-1 (App. 35) or Trustees *de jure* under BCO Section 6-2 (App. 35), were impressed with the duty to recognize the potential of the use found in BCO § 6-3 as follows:

> "If a church is dissolved by the Presbytery, or otherwise ceases to exist, and no disposition has been made of its property, those who hold the title to the property shall deliver, convey and transfer to the Presbytery of which the church was a member, or to the authorized agents of the Presbytery, all property of the church . . . ." App. 36.

The Decision below divests this secondary use without any recognition of its existence.

The church property rights of Petitioners and PCUS are to an important extent found in the deed language, "rules and regulations of the Church." The above quoted BCO § 6-3 is one of such rules.

The neutral principles method was approved by this Court and defined as follows:

> "The method relies exclusively on objective, *well-established concepts of trust and property law* familiar to lawyers and judges . . . the neutral principles analysis shares the peculiar genius of private-law systems in general—flexibility in ordering private rights and obligations *to reflect the intentions* of the parties. Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property . . . in the event of a schism or doctrinal controversy." *Jones* v. *Wolf*, 99 S.Ct. 3020, 3025-6 [Emphasis added.]

The neutral principles method was then further defined in this manner:

> "In addition, there may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property. If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body." *Id.* at p. 3026.

The relationships into which the property of the Vineville Church was conveyed and held are defined in part in the deeds of conveyance and in part in the provisions found in the PCUS Constitution in the Book of Order.

The forty-five VPC members acquiring the property beginning more than fifty years ago knew that PCUS was a hierarchical and not a congregational church. By the deeds and the provisions of BCO, they manifested an

intention that the Church property be held subject to the form of government of PCUS.[8]

The Church property was not committed by those who were members when Vineville Church was founded and when the various properties were acquired to the unsupervised and arbitrary whim of the departing VPC members.

The record is devoid of evidence of any contribution made by Respondents to the property of the Church. The frequent references by the Supreme Court of Georgia that the general church has not contributed funds to the local congregation, implying some equity in the present members of the congregation, overlooks the fact the property was acquired many years ago by members now departed, all of whom so far as the records show were completely loyal to PCUS. Thus the equities based on financial contributions in acquiring the property lie with those loyal to PCUS. In addition, it is PCUS that has trained the ministers who have served the VPC and have provided it with church literature and other highly important supports.

The parties have stipulated that Presbytery organized the Vineyard Presbyterian Church in 1904 upon the Petition submitted "to the Macon Presbytery . . . seeking to

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[8] Chapter 6, Section 6-1. ". . . *The powers and duties of such trustees must not infringe upon the powers or duties of the Session or of the Board of Deacons. Such trustees shall be elected in regulatly constituted meetings.*" [Emphasis added.] (App. 35)

Section 6-3. "*If a church is dissolved by the Presbytery, or otherwise ceases to exist, and no disposition has been made of its property, those who hold the title to the property shall deliver, convey and transfer to the Presbytery of which the church was a member, or to the authorized agents of the Presbytery, all property of the church*; . . . ." *See* also BCO Section 15-6(10) quoted in n.3, *supra*.

Sec. 15-6 (6, 8, 9)

be organized into a Presbyterian Church." (App. p. 316) "A church can be organized only by authority of Presbytery." (App. 33) Being organized as a church involves entering into the following covenant:

> "Do you, in reliance on God for strength, solemnly promise and covenant that you will walk together as an *organized church*, on the principles of the faith and *order of the Presbyterian Church in the United States*, and that you will be zealous and faithful in maintaining the purity and peace of the whole church?" [Emphasis added.] (App. 33)

Notwithstanding the Vineville Presbyterian Church having submitted to the government of PCUS, and notwithstanding the clear provisions of the BCO, Petitioners have been subjected (as stipulated by Respondents) "to the complete exclusion of utilization of any of said property . . . as a local unit of the Presbyterian Church in the United States . . ." (App. 318) The Court below, while decrying reference to polity, has defied pre-existing covenant and constitution in giving absolute deference to a vote of Respondents for the purpose of identifying both the beneficiaries and purposes for which the property is to be used. The civil court did this even though the identity of the congregation must be determined only by reference to church polity. This result can be defended only by the assertion, specious upon its face, that Respondents who rejected, denounced and abandoned PCUS are its "true" congregation as defined in its Constitution.

Having renounced covenant and church, Respondents are rewarded by Georgia's grant to them of the church property to the exclusion of those beneficiaries remaining loyal.

It is a long and dearly held neutral principle of Due Process that the State may not deprive an unfavored group of its property for the purpose of benefiting a

group more favored by the State.[9] For the Court below to divest the use of church property ex post facto in favor of a group preferred by the State is a clear invasion of constitutional rights.

By whatever name called, Petitioners and Presbytery have a substantial property interest provided in the Constitution of PCUS, by which VPC agreed to be governed, giving Presbytery the right to set aside the Session and assume direct jurisdiction and any property of the church which "is dissolved by the Presbytery, or otherwise ceases to exist . . . ." (App. 36) The clear, express duty of those holding title is to make the conveyance.[10] (App. 36)

VPC has not been dissolved in order to invoke the dissolution clause of the PCUS Constitution (App. 36), nor need VPC be dissolved. By any rational, neutral reading of the stipulated documents, the property is in the grip of a group admitting itself not to exist in PCUS within the meaning of the provision, "[a] church can be organized only by the authority of Presbytery." (App. 33) Under no

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[9] *Bayard* v. *Singleton*, 1 N.C. 5 (1787). ". . . For that if the Legislature could take away this right, and require him to stand condemned in his property without a trial, it might with as much authority require his life to be taken away without a trial by jury, and that he should stand condemned to die, without the formality of any trial at all: that if the members of the General Assembly could do this, they might with equal authority not only render themselves to Legislators of the State for life, without any further election of the people, from thence transmit the dignity and authority of legislation down to their heirs male forever." *Id.* at p. 7.

[10] In *Wyche* v. *Alexander*, 15 N.C. App. 130, 189 S.E.2d 608 (1972), *cert. den.* 281 N.C. 764, 191 S.E.2d 361 (1972), the Court affirmed the finding of the Trial Court, "that title to Westminster's real estate was conveyed to the Trustees of Westminster for the purposes of a trust defined by the provisions of the Constitution of the United Presbyterian Church in the United States of America, wherein their offices and duties were created, as found in the Book of Order, and that, upon dissolution of Westminister, title to the church property passed to the parent organization in furtherance of the purposes of the trust." 15 N.C. App. at 134.

construction of the stipulated documents is a group not organized by Presbytery entitled to use the property. Upon a church organized by Presbytery ceasing to exist, the duty of the trustees is to convey its property to Presbytery or its delegate. Respondents admit having ceased to be a church organized by Presbytery, and thus are affected by the duty to convey. Should this Court reach this result, then there would be no need for further inquiry. The duty to convey the property is clear, and whether to Petitioners or Presbytery ought not to be a matter of defense available to Respondents. There is no controversy between Presbytery and its congregation, Petitioners, for resolution by any civil court.

PCUS governs itself by a constitution which incorporates both doctrine and form of government. Courts, in suggesting amendment of the form of government in order to secure property rights, are treating the form of government as if it is only a manual of procedure. PCUS views its form of government as a visible expression of what it believes about God and the church. To require PCUS to amend its form of government is to require PCUS to change its belief about the way in which the church serves God.

III

GEORGIA IS ALONE IN INTERPRETING THE PCUS DOCUMENTS IN FAVOR OF DISSIDENT MAJORITIES OF LOCAL CONGREGATIONS.

The Alabama Trial Court held that loyal members and the administrative commission of the PCUS Presbytery were entitled to the use and control of church property on facts legally indistinguishable from the case at bar. The Supreme Court of Alabama reversed on the narrow ground of waiver and estopple. *Trinity Presbyterian Church* v. *Tankersley*, 374 So.2d 861 (Ala. 1979), *Pet. for Cert. filed* (U.S. Dec. 11, 1979) (No. 79-908).

The Florida Supreme Court on remand affirmed its earlier holding in favor of the loyal minority faction, that, "Petitioners represent their church because of the structure and government of PCUS." *Mills* v. *Baldwin*, 362 So.2d 2, 7 (Fla. 1978), *vacated and remanded*, 99 S.Ct. 3105, *aff'd on remand*, No. 51,588 (Fla. S.Ct. 1979).[11]

On facts also legally indistinguishable from those in this case, the South Carolina Supreme Court dealt with an argument of the seceding majority that, "the Presbyterian Church in the United States is congregational and not connectional insofar as matters of property are involved." The Court held, "By joining the First Presbyterian Church of Rock Hill the members did not acquire such an interest in the property that they are entitled to take with them upon seceding."[12] *Adickes* v. *Adkins*, —— S.C. ——, 215 S.E.2d 442, 444-5 (1975).[13]

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[11] "In short, a careful reading of the cases makes clear that the issue in a case such as this is not who owns the property. The Madison Presbyterian Church of Madison, Florida, owns the property. The true issue is who represents the Madison Presbyterian Church? The authorities from *Watson* v. *Jones* found and clearly respond that petitioners represent that church because of the structure and government of PCUS." 374 So.2d at p. 7.

[12] "The membership of churches cannot be expected to remain constant. Old members die or leave the church and new members are constantly being added to the rolls. Persons who purchased and contributed to the Mission property and caused it to be transferred to the Red Bank Church as a Cumberland Presbyterian Church, as well as those who have contributed to a substantial sum going into improvements later made, had every reason to expect their donations to remain under the government of the Cumberland Presbyterian Church and be used for the advancement of its faith and doctrine." *Fairmount Presbyterian Church* v. *Presbytery of Holston*, 531 S.W.2d 301, 305 (Tenn. 19).

[13] "The property belonged to the First Presbyterian Church of Rock Hill before the members joined the church, and it belongs to the same after they have withdrawn. They simply are not now a part of that church." 215 S.E.2d at 445.

Texas follows the familiar rule:

> "When a division occurs in a local church affiliated with a hierarchical religious body, and a dispute arises between rival groups as to the ownership or control of the local church property, the fundamental question as to which faction is entitled to the property is answered by determining which of the factions is the representative and successor to the church as it existed prior to the division, and that is determined by which of the two factions adheres to or is sanctioned by the appropriate governing body of the organization. It is a simple question of identity. [Authority omitted.] In making such a determination, the civil court exercises no role in determining ecclesiastical questions. It merely settles a dispute as to identity, which in turn necessarily settles a dispute involving property rights." *Presbytery of the Covenant* v. *First Presbyterian Church of Paris, Inc.*, 552 S.W.2d 865, 871 (Tex. Civ. App. 1977, *rehearing den.* 1977)

Manifestly, everyone can understand the Texas rule; no one can understand the Georgia rule.

The Superior Court of Lincoln County, North Carolina, in an unreported decision on facts legally indistinguishable from the VPC litigation, Trial Judge Frank Snepp held on Motion for Summary Judgment that the attempt to withdraw from PCUS was ultra vires, illegal and void, and enjoined the withdrawing members from interfering with the use of the property by the members loyal to PCUS.[14]

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[14] *Nixon et al* v. *Vanguard Presbytery et al*, Superior Court of Lincoln County, North Carolina, 73 CVS 622 (1974): "Pursuant to the Memorandum entered by the court upon the hearing of Plaintiff's motion for summary judgment on the 25th day of January, 1974, it is ORDERED, ADJUDGED and DECREED as follows: Plaintiffs are entitled to relief of defendants by summary judgment. Plaintiffs Paul K. Nixon, James M. Smith, Henry P. Graham, Myron M. Howard and Howard H. Terry are legal members of the Session of Unity Presbyterian Church of the Presbyterian Church in the United. The action of the majority of the congregation on June 3, 1973 in adopting the resolution of withdrawal of Unity Presbyterian Church from Presbyterian Church in the United States was ultra vires, illegal and void. Defendants and those acting in concert with them are hereby enjoined and restrained from interfering with or exercising dominion over the real and personal property of the Unity Presbyterian Church or interfering with the authority of the Church Session to carry out its authority and duties including those set out in § 15.6 in the Book of Church Order of the Presbyterian Church." There was no appeal.

CONCLUSION

PCUS respectfully submits that a review by this Court is necessary to correct grievous constitutional error committed in the Court below.

Respectfully submitted,

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Supreme Court of the United States

October Term, 1979

No. 79-987

R. W. Jones, Sr., et al,
Petitioners,

vs

Charles T. Wolf, et al,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF OF AMICUS CURIAE, WILLIAM P. THOMPSON, STATED CLERK OF THE GENERAL ASSEMBLY OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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CONSENTS TO FILE THIS BRIEF

Amicus curiae has obtained written consent from counsel for the Petitioners and from counsel for the Respondents that he may file this brief. The original letters of consent are being filed with the Clerk of this Court concurrently with this brief.

THE STATUS OF AMICUS CURIAE

William P. Thompson is the Stated Clerk of The United Presbyterian Church in the United States of America ("UPCUSA"), a voluntary religion association organized in 1706. He is the chief executive officer of the supreme body of the UPCUSA, the General Assembly, and he is responsible for the preservation of all church property.

On December 31, 1979, the UPCUSA had approximately 2,500,000 members, 14,186 ordained ministers and 8,634 particular or neighborhood churches. Each neighborhood church is governed by representatives elected to a board called the Session. The neighborhood churches in a district are organized into a governing body called a Presbytery, which has authority over all of the churches in the district. The Presbyteries in a larger district are organized into a governing body called a Synod, which has authority over all of the churches and Presbyteries in the district. In the UPCUSA, there are 152 Presbyteries and 15 Synods. All of the neighborhood churches, the Presbyteries and Synods are under the supreme governing authority of the General Assembly of the UPCUSA, which is composed of commissioners elected to that body by the Presbyteries.

Amicus curiae considers proper resolution of the issues presented by this case to be vital to the survival of the hierarchical church of which he is the executive officer, and to the survival of all other churches adhering to the hierarchical principles of unity of doctrine, government and property. *Amicus curiae* believes the Georgia Court's decision tends to destroy these sacred principles, and that it violates freedom of religion and the Constitution of the United States.

REASONS WHY THE WRIT SHOULD BE GRANTED

Amicus curiae respectfully submits that the Supreme Court of the United States should grant certiorari in this case, *if for no other reason*, to provide a clarification of the application of a number of points recently announced in *Jones v. Wolf*, 99 S.Ct. 3020 (1979) ("*Jones v. Wolf I*").

It is very important to *amicus curiae* and, in fact, to all hierarchical churches, that such clarifications occur to avert the confusion threatened by *Jones v. Wolf I* and its modifications of the settled principles of *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871), and *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). Two aspects of the threatened confusion will be reviewed here.

I. The Georgia Supreme Court's decision fails to recognize that the unitary hierarchical church denomination—not the local congregation—is the voluntary association to which the members belong, and that it is the denomination—not the local congregation—which is governed by majority rule.

The functions of the unitary hierarchical church government of the Presbyterian Church in the United States ("PCUS"), following the sacred scriptures and the practice of the primitive Christian Church, have always included control over all church property by the denomination acting as one body with a united voice.

The language and holding in *Watson*, a case dealing specifically with a church government/church property dispute, are perfectly clear that the relevant association is the denomination which, as a unitary body of hierarchical structure governs the church and controls its property:

> In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not

violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. *The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned.* All who unite themselves to *such a body* do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding only to such appeals as the organism itself provides for.

Nor do we see that justice would be likely to be promoted by submitting those decisions to review in the ordinary judicial tribunals. Each of these large and influential bodies (to mention no others, let reference be had to the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian churches), *has a body of constitutional and ecclesiastical law of its own, to be found in their written organic laws, their books of discipline, in their collections of precedents, in their usage and customs,* which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest minds to become familiar with. Id. at 728-729. (Emphasis added.)

The Georgia Court's use of a presumption of local majority rule that contradicts the decision of the unitary

hierarchical church on a matter finally decided by the collected wisdom and united voice of the whole church and that cannot be overcome with evidence of church precedent, usage and tradition, strikes at the very heart of Presbyterian church structure and government. The voluntary association to which the members of the Vineville Presbyterian Church belong is the PCUS, and to permit a majority of the local members to prevail over the decision of the Church as a whole, violates both the Free Exercise and Establishment clauses of the First Amendment as interpreted for over a century.

The decision of the Georgia Court is confused as to the identity of the voluntary association to which the withdrawing members belonged. By ignoring the decision of the church judicatories within the PCUS, it imposes upon all the members of the denomination, save the members of the Vineville congregation who voted to withdraw, a form of church government to which they have never consented. In so doing, the Georgia Court impermissibly announces and enforces a decision on PCUS church polity which states that the local congregation, rather than the unitary national hierarchical church, is the voluntary association to which the members belong and which is governed by majority rule.

II. The resolution of church government/church property disputes on a state-by-state basis creates intolerable confusion within national hierarchical churches.

The approach suggested by the court in *Jones v. Wolf I* allows the various states to apply at random any purported neutral principle of law, based on predilections of the judges within that particular jurisdiction. Such an approach results in confusion, and renders the survival of the national hierarchical churches questionable. In the final analysis, this approach results in a form of administrative law in each state which must be adhered to by hierarchi-

cal churches. Churches can exercise freedom of religion, so long as that exercise does not touch on the issue of the relationship between church government and church property. The carving of such an exception from the protection of the First Amendment was certainly not a result anticipated by the founding fathers.* The right to control of the real and personal property of the church is as much a part of the religion as the doctrine, creed and form of government which the church and its members have chosen to adopt, and decisions of doctrine, creed and form of government are inextricably bound up with church property decisions.

Mr. Justice Frankfurter hit the nail on the head in his concurring opinion in *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, at p. 121:

> St. Nicholas Cathedral is not just a piece of real estate. . . . What is at stake here is the power to exercise religious authority. That is the essence of this controversy.

National hierarchical churches can no longer rely on their traditions, precedents and creeds to determine the proper manner of exercising their religion. Since the effect of these traditions, precedents and creeds will vary from state to state, there is and will continue to be confusion as to the authority of church officials and judicatories and the need to deviate from the teachings of scripture and primi-

*Presbyterians were among those considered dissenters in Colonial days. They were among those who needed the assurance of the First Amendment. Moreover, the distinctive characteristics of the Presbyterian Church are governmental. Other denominations adhere to the same Reformed beliefs as the Presbyterians, but three governmental characteristics must be present for a church to be Presbyterian. The governmental characteristics of differentiation are: (1) the parity of the clergy; (2) substantive participation in church government by the laity; and (3) unity of government, *i.e.*, the parts are integral and comprise the whole.

tive church practice to comply with the dictates of the state. Consequently, this Court should grant the Petition for Writ of Certiorari to reconsider the function of civil courts in church government/church property disputes in unitary hierarchical churches.

CONCLUSION

For all the reasons set forth above, we respectfully urge the Court to grant a Writ of Certiorari and reverse the decision below.

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